IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2003

CORAM

THE HONOURABLE MR. JUSTICE K. SAMPATH

Writ Petition No.34811 of 2002
and W.P.Nos. 40931, 41707, 43908 to 43916, 44053, 44196, 44053, 44054, 44163 to 44173, 44441, 44442, 44491, 44492, 44583, 44 605, 44681, 44682, 44933 to 44937, 45149, 45160, 45364, 45374 to 453 76, 45614, 45638, 45795, 45892, 46056, 46063, 46065, 46095, 46096 to 46098, 46142, 46164, 46184, 46207, 46379 to 46383, 46421, 46428 to 46432, 46440 & 46441, 46520, 46547, 46633, 46634, 46757, 46867 to 46869, 46920, 46953, 46959, 46960, 47042 to 47045, 47096 to 47101, 47 124 of 2002

201, 203, 233, 234, 282, 458, 712, 715, 717, 718, 734, 779, 780, 85 2, 919, 1042, 1043, 1188, 1189, 1204, 1233, 1349, 1385, 1393, 2137, 2 317, 2794, 2795, 5045, 5046, 5432, 5816 to 5823, 5834, 5835, 6411, 6 831, 6832, 7391, 7392, 7473, 13178, 13179, and 13255 of 2003

WP No.34811 of 2002

$Southern India Educational Trust
rep by its Secretary
S.M. Kamaluddin Fakhri
54-K Bharathidasan Salai
Teynampet
Chennai 18. .. Petitioner

-Vs-

The All India Council for
Technical Education
rep. by its Adviser (E&T)
Indira Prastha Estate
Indira Gandhi Sports Complex
New Delhi. .. Respondent

!For Petitioner in WP 34811/02 :: Mr. M. Muniruddin Sheriff

^For AICTE in all Wps :: Mr. Vijay Narayan

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus as stated

therein.

:O R D E R

The writ petitions, in substance, challenge the validity of amended Regulation 8(4)(e) of the All India Council for Technical Education Act (AICTE for short) as published in Gazette of India, dt.25.11.200 2 - the condition requiring No Objection Certificate (NoC for short) from the State Government as advertised in August, 2002, calling for applications for approval of new colleges and additional courses; and, the order of the Anna University refusing to consider the application for affiliation on account of want of NoC from the State Government.

2. Amended Regulation 8(4)(e) says that unless NoC from the State Government is enclosed to the application, the claim for approval to start an engineering college or for additional courses, will not be entertained. According to the petitioners, Regulation 8(4)(e) is totally unnecessary. The State Government has no role to play in the matter of starting of new institutions or inclusion of new courses.

3. Mr. R.Krishnamoorthy, Senior Counsel, leading the arguments made elaborate submissions. Mr. K.Duraiswami, Mr. Mohan Parasaran, Senior Counsel, Mr. Jeevarathnam, Mr. Pl.Narayanan, Mr. Natarajan, Mr. Sureshkumar, Mr. Zaffarullah Khan, besides adopting the arguments of Mr. Krishnamoorthy, also raised other contentions. All the arguments advanced are considered together. Individual submissions will be referred to whenever and wherever necessary. According to counsel:

3.1 State Government, by reason of the amended Regulation of 8(4)(e), will be exercising powers which are not meant to be exercised by the State Government. By reason of the insertion of "higher education" in Entry 66 of List 1 after deleting Entry 25 from List II and by replacing "Education" in Entry 11 of List II, the Supreme Court and various High Courts have been repeatedly holding that the State Government has no jurisdiction in the matter of establishing and administering technical institutions, and in those circumstances, insisting on NoC from the State Government is absolutely without jurisdiction; as per the amendment under challenge, NoC of State Government is a condition precedent for entertaining the application and on failure to comply with the condition of production of NoC for starting a new College, no hearing will be provided to the applicant; it is also stated that NoC from the affiliating University is a further requirement to consider the claim for approval by the Committee; thus, the amended provision confers power upon the State Government to decide the eligibility of a particular applicant even to apply for starting of a new college which is ultra vires the Constitution and illegal for the following reasons:

3.1.1. (a) Legislative function is sought to be delegated to another body contrary to the dicta laid down by the Supreme Court in - State of Tamil Nadu v.. Adhiyaman Educational Institute (1995 (4) SCC 104)
Thirumuruga Krupananda Variyar & Variyar

Thavathiru Sundara Swamigal Medical Educational &
Charitable Trust v.. State of Tamil Nadu (1996 (3) SCC 15)
Jaigokul Educational Trust v.. commissioner & Secretary to
Government, Higher Education Department (2000 (5) SCC 231).

(b) It offends the dictum laid down in TMA Pai Foundation
Case, 200 2 (8) SCC 481 : 2002 (8) SCALE 1, that everyone has a fundamental
right to establish an educational institution.
(c) Approval is legislative in character. It cannot be
delegated by the AICTE in favour of an outside Agency.
(d) There is abdication of power beyond the scope of the
provisions of the Act, and the same is unguided, irrational, ultra vires and
suffers from excessive delegation.

In the submission of the counsel; a perusal of Section 14 of
the Act r/w Regulation 8(4)(a) to (e); Regulation 8(6) and Regulation 9 will
show that a detailed procedure is provided to have all kinds of assistance and
to collect necessary information to submit recommendation by the Regional
Committee. The Regional Committee is the competent authority conferred with
jurisdiction to issue a Viability Certificate. Regulation 9 makes it clear
that the Regional Committee and Board of Studies alone are considered to be
the Agencies of the AICTE. By virtue of the amendment, the power and
functions of the statutory authority namely the Regional Committee has been
usurped and illegally conferred upon the State Government. Even in the
absence of the impugned amendment, the State Government authorities such as
Director of Technical Education, Secretary to Government, University, etc.
have their due role in making recommendations and there is the right to
deliberate by the Regional Committee or the Board of Studies as the case may
be. The impugned amendment is, therefore, invalid.

(e) It is arbitrary, irrational and there is no nexus:
In view of the existing provision, there is no jurisdiction warranting
NoC from the State Government that too as a pre-condition to entertain the
application.

(f) It is beyond the scope of Secs.20 & 23 of the AICTE Act:
The Central Government alone is the competent authority to evolve policy and
the Council is bound by the decision. Hence, the reason that it is a policy
resolution of the AICTE, cannot be countenanced. The Regulation making power
as provided under Section 23 should not be inconsistent with the provisions of
the AICTE Act. In the instant case, the power of the Regional Committee has
been taken away.

(g) The impugned policy decision of the Government of Tamil
Nadu not to permit establishment of any new Engineering College for providing
degree courses in Engineering or granting permission for increase in the
intake of admission, on wholesale basis, is totally unreasonable and violates
Articles 14 and 19(1)(g) of the Constitution of India. The State Government
does not possess any power to take a wholesale policy decision, and it would
be unconstitutional for the following reasons:

(i) The policy decision would be beyond the legislative competence of the State as it will have a direct and inevitable impact on the powers of the Union as delineated in Entry 66 List I to the VII Schedule of the Constitution of India.
(ii) The power of the State Government is found in Entry 25 of List III - Concurrent List, and this power can be exercised subject to the provisions of Entries 63, 64, 65 and 66 of List I to the VII Schedule of the Constitution of India. Section 10(k) of the Act has already occupied the field in so far as it envisages and empowers the AICTE to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. The expression 'in consultation with the agencies concerned' would imply that the ultimate power for grant of approval only vests with the AICTE; but the only duty that is envisaged on the part of the AICTE is that it should consult the agencies concerned before grant of approval. Regulation 8(4)(e) in so far as it seeks to make it as a pre-condition to obtain the State Government's NoC for the purpose of establishment of new engineering colleges or technical institutions tantamounts to the AICTE virtually abdicating its powers to grant approval, to the State Government. Consequent on the alleged universal policy decision stated to have been taken by the Tamil Nadu Government, the AICTE is disabled to grant any approval and has virtually abdicated its function in favour of the Tamil Nadu Government, and to that extent, Regulation 8(4)(e) is inconsistent with the provisions as contained in Section 10(k) of the AICTE Act. By forbidding establishment of new engineering colleges, two different classes have been created, viz., existing institution in whose favour a sort of monopoly is created with those institutions being protected by the State which through its policy decision is not allowing any other new engineering college or technical institutions to be set up. This is violative of Articles 14 and 19(1)(g) of the Constitution of India.
(iii) In TMA Pai Foundation's case, imparting education has been elevated to the status of 'occupation' as opposed to a trade, profession or calling. There can be no commercialisation of education and many States have passed enactments prohibiting capitation fees. In those circumstances, it cannot be said that there is any element of profit, except to the extent as indicated in the TMA Pai Foundation's case. No law can be passed by the State prohibiting the establishment of the legitimate occupation in the form of starting of new engineering college or technical institution. It is not the case of the Government that State monopoly is going to be created for establishment of colleges only by the State so as to save any such policy under the provisions as envisaged in Article 19(6)(ii) of the Constitution of India. Such an universal policy decision would strike at the very root of linguistic or religious minorities which have a fundamental right to establish educational institutions of their choice on a combined reading of both Articles 29 and 30 of the Constitution of India, be it aided or unaided. Any such policy is contrary to the decision of the Supreme Court in SHIVAJI UNIVERSITY v.. BHARATHI VIDYAPEETH, AIR 1999 SC 1762.
(iv) Further, Article 51(A)(h) envisages that every citizen has a fundamental duty to develop the scientific temper, humanism and spirit of inquiry and reforms. Article 51(A)(j) also mandates to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavour and achievement. If the

policy decision of the State Government is upheld, then even the state-of-the-art institutions having facilities even superior to that of IIT will not be able to establish an engineering college in Tamil Nadu. The above said policy decision is not in public interest and therefore is unreasonable. The existing engineering colleges become a favoured entity. There is discrimination and it is contrary to Article 19(1)(g) and the law declared by the Supreme Court in KRISHNAN KAKKANTH v.. STATE OF KERALA, 1997 (9) SCC 495 .

(h) Section 10(k) of the Act talks about 'consultation with the agencies concerned'. Therefore, NoC granted by the State Government cannot be treated as a mandatory condition but a mere recommendation not binding on the AICTE and this upheld by the Supreme Court in JAI GOKUL EDUCTION TRUST's case [2000(5) SCC 235]. The State Government cannot unilaterally increase admissions in institutions such as medical colleges or dental colleges - like Medical Council of India Act and Dental Council of India Act. The State Government cannot fix any intake of students nor can seek to grant permission for establishment of new engineering colleges without reference to the AICTE. But the Universities have a right to start new engineering colleges even without the permission of the AICTE, but subject to complying with the norms of the AICTE [BHARATHIDASAN UNIVERSITY & ANOTHER v.. the AICTE, 2001(8) SCC 676, MEDICAL COUNCIL OF INDIA v.. STATE OF KARNATAKA, AIR 1998 SC 2423, STATE OF MAHARASHTRA v.. MEDICAL COUNCIL OF INDIA, 2002 (1) SCC 589]. The effect of the policy decision not to establish new colleges would make the State Government master and the AICTE a mute spectator. This is totally disproportionate, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India, OMKUMAR & OTHERS v.. UNION OF INDIA [20 01(2) SCC 386] and STATE OF MAHARASHTRA v.. INDIAN MEDICAL ASSOCIATION [AIR 2002 SC 302].

(i) Anna University has also not acted independently notwithstanding the fact that it is well established that the University being an autonomous institution, is not bound by any policy decision taken by the State Government and it has to decide on the question of grant of affiliation on the basis of reasonable norms which are not in conflict with the AICTE prescription. The State shall have no role to play in this. In ADHIYAMAN ENGINEERING COLLEGE's case [1995 (4) SCC 104] the Supreme Court struck down the provision in the University Act which requires obtaining of prior permission from the State Government for purposes of grant of affiliation as being contrary to the AICTE Act. The AICTE Act is a Union legislation and it is very unreasonable that by introducing Regulation 8(4)(e), the spirit and effect of the judgment of the Supreme Court interpreting Section 10(k) of the AICTE Act is sought to be nullified or whittled down. The amendment is a colourable exercise of power and vitiated by legal mala fides, as would be evident from the conduct of the AICTE. The regulations seek to affect the legitimate expectations of many parties and trusts which have proceeded to put up constructions only on the basis of the communications received from the ACITE, which was ready to send the inspection teams to certain colleges which have applied even during 2000-2001 and subsequently for grant of approval for 2003-04. St. John's case [2003 (1) SCALE 757] has no application to the facts of the present case.

3.1.2. Mr. K. Doraiswami referred to TMA PAI FOUNDATION v.. STATE OF KARNATAKA, 2002 (8) SCC 481 : 2002 (8) SCALE 1, and submitted that conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions, that all education should be liberal and that each state if allowed to have its own policy, uniformity will be lost.

3.1.3. Mr. Mohan Parasaran relied on TMA Pai Foundation's case - Paras 1, 5, 18 to 20, 23, 24 and 26, 35, 36, 39, 54, 55, 57, 62 to 67. The learned Senior Counsel contended that the State Government does not say that public order, morality and health are affected. Facilitator cannot take a policy decision.

3.1.4. Mr. Jeevarathnam submitted that advertisement at the request of the State Government had been made and the AICTE does not act on its own.

3.1.5. Mr. Natarajan submitted that notification is beyond the power of the Act. He referred to the functions of the council and submitted that only consultation and not concurrence is required from the State Government. He relied on Supreme Court Advocates on record Association & others v.. Union of India, etc., 1993 (4) SCC 441; Indian Administrative Services (SCS) Association, U.P., and others v.. Union of India & others, 1993 Supp. (1) SCC 730 para 26.

3.1.6. Mr. Sureshkumar relied on the Regulations in St. John's case relating to National Council for Teacher Education (NCTE for short) and submitted that the safeguard is introduced in the amended Regulation and the Supreme Court has stated that the endorsement itself may be considered, and that there are several distinguishing features between the two Acts.

3.1.7. Mr. Zaffarullahkhan submitted that - the principle of legitimate expectation is attracted, that because of the shift in the policy the people who had complied with the AICTE requirements are seriously affected; NoC is only recommendatory in nature; when Kamaraj University has recommended, the AICTE cannot insist on NoC from the State Government.

3.1.8. Mr. Pl.Narayanan relied on STATE OF TAMIL NADU v.. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE, 1995 (4) SCC 104, paragraphs 30 & 32, GOVERNMENT OF ANDHRA PRADESH v.. GVK GIRLS HIGH SCHOOL, AIR 20 00 SC 2651, JAIGOKUL's case (supra) and ST. JOHN's case (supra) and submitted that applications already submitted and in the process of evaluation should not be rejected on the ground of non-production of NoC in view of the amended regulation.

4. The points raised in the counters and the submissions made by Mr. Vijay Narayanan learned counsel for the AICTE are as follows: On 20.11.2002, in exercise of the powers conferred by Section

10(k) read with Section 23 of the AICTE Act, the AICTE Regulations 199 4 came to be amended and Regulation 8(4)(e) was introduced. The AICTE had also issued policy resolution, dt.20.11.2002, published in the Gazette of India (Extra Ordinary), and the policy resolution is as follows:
"The Executive Committee of the AICTE has taken certain important policy decisions and pursuant to such decisions, the AICTE is determined to implement all these decisions which form the basis of this resolution, from the Academic Year 2003-04 onwards.
(i) Any proposal for establishment of the new technical institutes or increased intake or additional programmes has to be supported by No Objection Certificate (NoC) of the concerned State Government/UT Administration. The proposals without the NoC shall not be considered by the AICTE at any stage and such proposals shall stand rejected."

As a matter of policy the AICTE requires NoC from the State Government/UT. The policy is the result of the experience gained by the AICTE over the years in administering the Act and the Regulations and earlier as a non-statutory body. A large number of private Engineering Colleges and Polytechnics had come up with a complete disregard of the guidelines laid down by the AICTE as a non-statutory body. Most of the institutions have serious deficiencies in terms of rudimentary infrastructure necessary for imparting education and training. Earlier, though a number of colleges were set up in the Private Sector, the demand for seats in professional and non-professional courses far outstripped the supply of such seats. However, in course of time, the private Engineering Colleges and Polytechnics, which had come up, did not conform to the requirements, and the AICTE came to the conclusion that it should be vested with statutory powers to regulate and maintain the standards of technical education in the country. A national Working Group was set up in November 1985, which recommended that the AICTE should be vested with statutory authority. Similarly, the National Policy of Education, formulated in 1986, also stipulated that the AICTE should be vested with statutory authority. Act 52 of 19 87 came to be passed giving statutory status to the AICTE. Section 1 0(k) gives power to the AICTE to grant approval for starting new Technical Institutions and introduction of new courses or programmes in consultation with the agencies concerned. In exercise of this power as well as the powers under Section 23 of the Act, the AICTE has made Regulations. As per Regulation 4, no new technical institution shall be started, new course or programme shall be introduced, and no approved intake shall be increased or varied except with the approval of the Council. Regulation 8 sets out the scrutiny of applications and Regulation 8 (1), (2), (3), (4), (5) & (6) are the relevant regulations. The agencies concerned have been specified in the Regulations as the University concerned, the Directorate of Technical Education, the State Government, the University Grants Commission and the Local Inspection Committee. Each of these agencies has a vital role to play in the grant of approval. Their views have to be taken into consideration for grant of approval. In the recent past, it has been noticed by the AICTE on the basis of various statistics collated by it that in some States, the number of Colleges and the seats offered by them far exceed the actual demand for such colleges and seats. There were discussions held by the AICTE. As a result of which, it was felt that if a College is not able to fill up the seats to the extent of its sanctioned intake, it would not be in a position to

maximize its revenue and hence it would not be in a position to reinvest money in supporting the existing infrastructure and in creating additional and better infrastructure for the benefit of its students. This was felt to be a major factor leading to the deterioration in the standards of the Institutions. As an Apex Regulatory body, it is not practically possible to know in minute detail the ground level reality in each State as far as the demand for seats is concerned. Only the State Governments are in a position to decide the need for additional seats. Thus, while the AICTE decides the norms and standards for approval, the AICTE itself considers that the need for additional seats, colleges and infrastructure in education could be left to the State Governments concerned who would be in a better position to assess these matters. The result of these discussions is reflected in the new policy of the AICTE that the State Government concerned or U.T. should be actually involved in the process of deciding whether any new technical institution or course should be started in the State concerned. The essential functions of the AICTE are not abdicated by this. It continues to retain with itself the right to determine the norms and standards of technical education and grant approval. This is a policy decision which cannot be stated to be arbitrary, perverse or illegal. Wisdom of the policy cannot be questioned under Article 226 of the Constitution especially when the policy has been laid down by an Expert Body for regulating the norms and standards of technical education.

4.1 ADHIYAMAN COLLEGE's case and JAIGOKUL TRUST's case will not apply to the present situation. In those cases, the State Governments or Universities concerned claimed the right to control the establishment of a new Technical Institution or Course without the approval of the AICTE and in such circumstances, the Supreme Court held that after the enactment of the Act, the field of higher Technical Education had been taken over by the Act and therefore, it was no longer open to any State Government or University to assert that it should give a NoC for the establishment of a new technical institution. The situation at present is exactly the opposite. The AICTE has taken a decision as reflected in the Regulations that every applicant should submit NoC from the State Government or the U.T. concerned. This is a requirement stipulated by the AICTE and it has been well within its right. In those earlier decisions, there was no such stipulation by the AICTE. It is a matter of policy and in this policy, in the absence of any perversity or arbitrariness, the Court cannot interfere. It cannot also be assumed that the State Government would act arbitrarily. In any event, if there is any arbitrariness in the exercise of power in individual cases, the parties concerned would have the right to approach the Court for redressal. The grant of approval cannot be stated to be legislative in character, and it is only administrative. The approval process is not granted by the AICTE to the State Government. the AICTE undertakes the process of approval at every stage and the ultimate order of approval or rejection, as the case may be, shall be passed only by the AICTE. This power, to grant or reject, has not been delegated by the AICTE to anybody. The AICTE is entitled to direct the applicant to produce certain documents or other requirements and one such requirement insisted upon is an NoC from the State Government. Under the Act and the Regulations, the AICTE has the right to consult the agencies concerned. Effective consultation has been found to be necessary after experience gained over several years. The AICTE is not a delegated authority

and nor is there abdication. The State Government is also not a delegated authority. Section 20 of the Act would not apply to the facts and circumstances of the case. Therefore, there is no question of the policy resolution being ultra vires. There is no abridgement of the statutory functions of the Regional Committee either. There is no delegation of the functions of the statutory body to the State Government. The Regulations are not inconsistent with the provisions of the Act. No exclusive jurisdiction has been granted to the State Government to start a technical institution. If the State Government concerned does not act properly, it is always open to the aggrieved party to approach the Court.

4.2 The grounds of attack are limited to ultra vires, excessive delegation, violation of Fundamental Right and lack of guidelines. As regards the presence or absence of guidelines, in LORDS AND ANGELS TEACHER TRAINING INSTITUTE v.. THE STATE OF TAMIL NADU, 1997 (1) LW 78 7, dealing with the provisions of NCTE Act, it was held that the object of the Act and the provisions contained therein coupled with the norms and the guidelines, as found in the Regulations, provide sufficient guidelines for the State Government to exercise their power. That apart the power has been vested with the highest authority, namely, the State Government and there is no reason to presume that the highest authority will act in a biased manner ignoring public interest and the interest of Technical Education. Similar is the position in the present case. It is not as if there are no guidelines in the Act or in the Regulations. There is no fundamental right affected. The Regulations under the NCTE have been upheld by the Supreme Court in St. JOHN'S TEACHER TRAINING INSTITUTE v.. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION, 2003 (1) SCALE 757. The ratio laid down by the Supreme Court in that case would squarely apply to the facts of the present cases as well.

4.3 According to counsel, none of the objections, on behalf of the petitioners, is valid. Section 10(b) of the Act in particular provides that the Council may co-ordinate the development of Technical Education in the country at all levels. Rule similar to Regulation 8(4)(e) has been already upheld in St. John's case. In exercise of powers found in Sections 14 and 23, Regulations have been framed. Guidelines are there in Regulations 4, 6 and 8. State Government discharges a very important function as could be seen from the schedule.

4.4.1 The State of Tamil Nadu and the Director of Technical Education filed a common counter and a common additional counter. After setting out the relevant paragraphs of the Act and the Regulations, the counter proceeds to state as follows:

The functions entrusted to the AICTE could be effectively carried out and its object to ensure co-ordinated and integrated development of Technical Education at all levels throughout the country in a planned manner could be achieved only by involving all the State Governments/Union Territories/Universities and other Agencies concerned with Technical Education. The various functions contemplated cannot be performed by the AICTE without involving the State Governments concerned by assigning them due

role to play. Considering the importance of coordination between the State Government/U.Ts./Universities with the AICTE for achieving its object, Parliament has provided for representation of the State Government/U.Ts./Universities in the Council to enable the Council to formulate broader policy applicable to all over the country. As far as the development of Technical Education in a particular State is concerned, it requires detailed study of various factors in consultation with the State Government concerned. In such circumstances, the State Governments have been assigned the responsibility of issuing NoC for establishing technical institutions. The regulations have been suitably amended to insist on NoC from the State Government.

The counter then sets out in tabular form the position prevailing between the years 1996-97 and 2002-03 and projects how many seats in several newly established institutions remained unfilled. The situation prevailing at present in the field of Technical Education in Tamil Nadu makes many institutions unviable necessitating the institutions to make a claim for lowering the minimum eligibility criteria to fill up the seats. It is not as if the students with required minimum marks as prescribed by the State Government are not available. There is no question of lowering the minimum eligibility as it would enable the students with lesser marks to get admission in technical institutions merely for the reason that they can afford to pay higher fees. This would result in the students with higher marks being deprived of their chance to get admission. Relaxation of minimum marks would affect the standard/quality of Technical Education maintained in the State. In such circumstances, the participation of State Government and the University concerned in the State in processing the application for approval is indispensable. The necessity for insisting on NoC from the State Government has, therefore, arisen. The State Government is placed in a better position to ascertain the requirement of technically qualified graduates in various fields like textile industry, leather processing etc. and it has every justification to suggest or set priorities in introducing new technical courses/ institutions depending upon the need or demand in the State or outside the State. This would also enable the AICTE to achieve its object of coordinated and integrated development of Technical Education. Similar provisions in NCTE Act have been upheld by the Supreme Court in St. John' s Teacher Education's case [2003(1) scale 757]. It has been observed in that decision that it will not only be difficult but almost impossible for Regional Committee to itself obtain complete particulars and details required for grant of recognition. The Supreme Court has further observed that the Regional Committee under the NCTE Act cannot perform such Herculean Task, and that it has to necessarily depend upon some other agency or body for obtaining necessary information. Similar procedure prescribed by NCTE having been upheld, the present impugned regulation has to be upheld.

4.4.2 The additional counter tabulates the details of the number of applications received for establishing new Engineering Colleges, applications received for introduction of additional courses/revision of intake for approved courses available in the existing Engineering Colleges, and the NoC granted by the Government. It is seen that the number of applications received for establishing new Engineering Colleges for the year 2003-04 is 12. The number of applications received for additional course/revision of intake in existing colleges is 158 , and the number of NoC

granted for additional course/revision of intake in the approved colleges has been given as 23 upto 31.3.2003. There are about 218 Engineering Colleges imparting Under Graduate Degree in Engineering and Technical Courses and the consistent increase of unfilled seats year by year has influenced the Government to come to the conclusion that it is not necessary to grant NoC to establish self financing Engineering Colleges to impart education in Under Graduate technical courses for the year 2003-04. The AICTE has also been informed that NoC for establishing new Engineering Colleges is not being issued by the State Government for the academic year 2003-04. In view of the above position, the State Government has taken a decision not to consider the applications for grant of NoC individually on case to case basis. The State Government would review the matter and take appropriate decision in respect of grant of NoC whenever there is a need for establishing new Engineering Colleges with innovative programmes in Technical Education. The State Government has taken a decision to grant NoC for the following activities during the year 20 03-04:

(i) For the revision of intake in any course/programme in Under Graduate Engineering by way of reduction or increase between the existing courses/programmes without exceeding the overall sanctioned intake in the various course/programmes.
(ii) For starting new M.E./M.Tech. courses in the existing Engineering Colleges wherein four batches of students have completed their study in Under Graduate courses.

Government has granted NoC for 21 applicants out of 26 applicants received for revision of intake in any courses in Under Graduate Engineering Degree. In regard to the applications received for introduction of M.E./M.Tech. Courses in the existing Engineering Colleges wherein four batches of students have completed their study in Under Graduate courses, the Director of Technical Education has been directed to conduct inspections and send his recommendation to the Government for consideration and issue of necessary orders. The details of the number of existing Engineering Colleges imparting MBA/MCA courses, total approved intake and the number of seats remaining unfilled in those colleges are as detailed below:

S.No.
Academic Session
No.of existing approved colleges
Total approved intake
Seats remain unfilled

MBA
MCA
MBA
MCA
MBA
MCA
1
2001-202
45
85
2510
4615
133
257

The State Government has to be involved in the process of granting approval for establishing technical institutions and introducing additional courses/revision of intake in the already approved courses in the existing institutions. There are no merits in the writ petitions and they have to be dismissed.

4.5 The learned Advocate General, besides supporting the stand of the AICTE, submitted that the AICTE has issued guidelines in the form of a letter that in view of Article 162 of the Constitution in the absence of any statutory rule occupying the field the Regulations or guidelines will be valid. He referred to St. John's case (supra) and urged that the Supreme Court has looked into the guidelines though they had been further whittled down. According to him itmes 1 to 8 enable the State Government to have a policy and there is no prohibition in the Regulations for framing guidelines. The learned Advocate General also referred to the decision reported in The Government of Tamil Nadu vs.. Emmanuel Teacher Training Institute, 2002 Writ LR 94 and submitted that what is required is to individually consider and examine the necessity for grant of NoC. He drew attention to analogous provisions in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder relating to opening of new schools or for additional classes and their recognition and also the relevant Act and the Rules relating to Nursery Primary and Matriculation Schools.

4.6 Mr. G. Masilamani, learned Senior Counsel appearing for Anna University, adopted the arguments of the Advocate General and the counsel for the AICTE.

5. Mr. R. Krishnamurthy, learned Senior Counsel appearing for some of the petitioners, besides reiterating the original submissions, further urged as follows:
The letter of the AICTE cannot be a guideline. The guideline without publication cannot have any force of law. The decision in LORDS AND ANGELS's case (supra) by the Supreme Court upholding NCTE Act is clearly distinguishable as, at that time, the decision of the Supreme Court in UNNI KIRISHNAN v. STATE OF A.P., AIR 1993 SC 2178, holding that establishing educational institution and right to recognition was not considered as

fundamental right, was holding the field. However, in TMA Pai Foundation's case, 11 Judges Bench of the Supreme Court has recognised that establishing educational institution is a fundamental right. The State Government by reason of the amendment is invested with the power to override the decision of Regional Committee by not giving NoC which is a pre-requisite to process the application itself. Again even in policy matters the Court can interfere when there is violation of Art.14 of the Constitution. Prescribing NoC by State Government as a pre-condition to process the application to start a new Engineering Colleges or an additional course is not a policy of the AICTE but the same would amount to abdication of powers. As per Section 5(S) of the Anna University Act, need of Engineering College is one of the criteria to be considered by the University while granting affiliation. If that is so, the statutory function of the University has been now delegated to the State Government which is totally an outside agency under the AICTE Act. The learned Senior Counsel submitted that the impugned amendment to the regulation must be struck down.

6. For a proper appreciation and resolution of the questions involved in the writ petitions, it is necessary to trace the background under which the Act hit the statute book and also to have a look at the relevant provisions of the Act and the regulations framed thereunder.

6.1 All India Council for Technical Education (the AICTE) was set up in 1945 by a Government resolution as a national Expert Body to advise the Central and the State Governments for ensuring the coordinated development of technical education in accordance with approved standards. During the first three decades the Council functioned quite effectively and there was phenomenal development of technical education in this period. However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE. Most of these institutions have serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Barring some exceptions, there is scant regard for maintenance of educational standards.

6.2 Taking the above into consideration, the Council at its meeting held in 1981 came to the conclusion that a stage had been reached when it should be vested with statutory powers to regulate and maintain standards of technical education in the country. A National Working Group was set up in 1985 to look into the role of the AICTE. It recommended that in order to enable the AICTE to play its role effectively, it should be vested with necessary statutory authority. The National Policy on Education, 1986 also stipulated that the AICTE would be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority, areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the co-ordinated and integrated development of technical and management education.

6.3 The Bill sought to provide statutory powers to the All India Council for Technical Education to ensure;
(i) proper planning and co-ordinated development of the technical

education system throughout the country;
(ii) promotion of qualitative improvement of technical education in relation to planned quantitative growth, and
(iii) regulation of the system and proper maintenance of norms and standards.

6.4 Accordingly, the power and functions assigned to the AICTE, inter alia, provide laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and to provide recognition or withhold recognition of programmes and institutions. As part of this overall co-ordination and developmental responsibilities, the AICTE will also give grants to institutions for identified developmental purposes. In addition, the AICTE will promote innovation, research and development, linkages with industry and greater access to technical education by women, handicapped, and weaker sections of the society.

6.5 The Act came into force on 28.3.1988, vide G.O.317 (E), dt.26.3 .88. The preamble sets down in brief the avowed purposes the Act will serve.

6.6 The definitions Section is Section 2. Section 2(a) defines " Commission" as the University Grants Commission established under Section 4 of the University Grants Commission Act, 1956 (3 of 1956); 2(b) defines "Council" as the All India Council for Technical Education established under Section 3; 2(f) states that "Regulations" means regulations made under this Act; 2(g) runs as follows:
" 'Technical education' means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare."

2(h) deals with 'Technical Institution'. 2(i) "University" means a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 (3 of 1956), and includes an institution deemed to be a University under Section 3 of that Act.

6.7 CHAPTER II deals with ESTABLISHMENT OF THE COUNCIL. Sections 3 to 9 are the relevant sections.

6.7.1 - 3 Establishment of the Council. -
(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Council by the name of the All India Council for Technical Education.
(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to contract and shall by the said name sue and be sued.
(3) The head office of the Council shall be at Delhi and the

Council may, with the previous approval of the Central Government, establish offices at other places in India.
(4) The Council shall consist of the following members, namely:-
(a) a Chairman to be appointed by the Central Government;
(b) a Vice-Chairman to be appointed by the Central Government;
(c) the Secretary to the Government of India in the Ministry of the Central Government dealing with education, ex-officio;
(d) the Educational Adviser (General) to the Government of India, ex-officio;
(e) the Chairman of the four Regional Committees, ex-officio;
(f) the Chairman of, -
(i) the All India Board of Vocational Education, ex-officio;
(ii) the All India Board of Technical Education, ex-officio;
(iii) the All India Board of Under-graduate Studies in Engineering and Technology, ex-officio;
(iv) the All India Board of Post-graduate Education and Research in Engineering and Technology, ex-officio;
(v) the All India Board of management Studies, ex-officio;
(g) one member to be appointed by the Central Government to represent the Ministry of Finance of the Central Government;
(h) one member to be appointed by the Central Government to represent the Ministry of Science and Technology of the Central Government;
(i) four members to be appointed by the Central Government by rotation to represent the Ministries and the Department of the Central Government, other than those specified in clauses (g) and (h);
(j) two members of Parliament of whom one shall be elected by the House of the People and one by the Council of States;
(k) eight members to be appointed by the Central Government by rotation in the alphabetical order to represent the States and the Union Territories:
Provided that an appointment under this clause shall be made on the recommendation of the Government of the State, or as the case may be, the Union Territory concerned;
(l) four members to be appointed by the Central Government to represent the organisations in the field of industry and commerce;
(m) seven members to be appointed by the Central Government to represent, -
(i) the Central Advisory Board of Education;
(ii) the Association of Indian Universities;
(iii) the Indian Society for Technical Education;
(iv) the Council of the Indian Institutes of Technology;
(v) the Pharmacy Council of India;
(vi) the Council of Architecture;
(vii) the National Productivity Council;
(n) four members to be appointed by the Central Government to represent the professional bodies in the field of technical and management education;
(o) not more than two members to be appointed by the Central Government to represent such interests not covered by the foregoing clauses as

the Central government may deem fit;
(p) the Chairman, University Grants Commission, ex-officio;
(q) the Director, Institute of Applied Manpower Research, new Delhi, ex-officio;
(r) the Director-General Indian Council of Agricultural Research, ex-officio;
(s) the Director-General, council of Scientific and Industrial Research, ex-officio;
(t) Member-Secretary to be appointed by the Central Government.
(5) Notwithstanding anything contained in Sub-section (4), -
(a) the first Chairman shall be the Minister of Human Resource Development of the Central Government;
(b) the first Vice-Chairman of the Council shall be the Minister of State for Education of the Central Government;
(c) the first member-Secretary of the Council shall be the Educational Adviser (Technical) of the Central Government.

6.8 CHAPTER III deals with POWERS AND FUNCTIONS OF THE COUNCIL. The relevant Sections are 10 to 14.

6.8.1 - 10 Functions of the Council. - It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may -
(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;
(b) co-ordinate the development of technical education in the country at all levels;
(c) allocate and disburse out of the fund of the Council such grant on such terms and conditions as it may think fit to -
(i) technical institutions, and
(ii)Universities imparting technical education in co-ordination with the Commission.
(d) promote innovations, research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes;
(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;
(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community.
(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;
(h) formulate schemes for the initial and in service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;
(j) fix norms and guidelines for charging tuition and other fees;
(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;
(l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;
(m) lay down norms for granting autonomy to technical institutions;
(n) take all necessary steps to prevent commercialisation of technical education;
(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;
(p) inspect or cause to inspect any technical institution;
(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;
(r) take steps to strengthen the existing organisations and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create position of professional, technical and supporting staff based on requirements;
(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants.
(t) advice the Commission for declaring any institution imparting technical education as deemed University;
(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme;
(v) perform such other functions as may be prescribed.

6.8.2. Section 11 runs as follows:
Inspection. - (1) For the purposes of ascertaining the financial needs of technical institution or a University or its standards of teaching, examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.
(2) The Council shall communicate to the technical institution or University the date on which any inspection under sub-section (1) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.
(3) The Council shall communicate to the technical institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that technical institution or

University, recommend to that institution or University the action to be taken as a result of such inspection.
(4) All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section (3).

6.9 CHAPTER IV deals with BODIES OF THE COUNCIL. It consists of sections 12 to 14.

6.9.1. Section 12 deals with Executive Committee of the Council. It runs as follows:
(1) The Council shall constitute a Committee, called the Executive Committee for discharging such functions as may be assigned to it by the Council.
(2) The Executive Committee shall consist of the following members, namely:-
(a) the Chairman of the Council;
(b) the Vice-Chairman of the Council;
(c) Secretary to the Government of India in the Ministry of the Central Government dealing with Education, ex-officio;
(d) two Chairmen of the Regional Committees;
(e) three Chairmen of the Boards of Studies;
(f) a member of the Council representing the Ministry of Finance of the Central Government, ex-officio;
(g) four out of eight members of the council representing the States and Union Territories under clause (k) of sub-section (4) of section 3;
(h) four members with expertise and distinction in areas relevant to technical education to be nominated by the Chairman of the Council;
(i) the Chairman of the University Grants Commission, ex-officio;
(j) the Director, Institute of Manpower Research, ex-officio;
(k) the Director General of Agricultural Research, ex-officio;
(l) the Member-Secretary of the Council.
(3) The Chairman and the Member-Secretary of the Council shall respectively, function as the Chairman and the member-Secretary of the Executive Committee.
(4) The Chairman or in his absence, the Vice-Chairman of the Council shall preside at the meetings of the Executive Committee and in the absence of both the Chairman and the Vice-Chairman, any other member chosen by the members present at the meeting shall preside at the meeting.
(5) The Executive Committee shall meet at such time and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as the Council may provide by regulations.

6.9.2. Section 13 deals with Board of Studies. It runs as follows:

(1) The Council shall establish the following Boards of Studies, namely:-
(i) All India Board of Vocational Education;
(ii) All India Board of Technical Education;
(iii) All India Board of Under-graduate Studies in Engineering and Technology;
(iv) All India Board of Post-graduate Education and Research in Engineering and Technology;
(v) All India Board of management studies.
(2) The Council may, if it considers necessary, establish such other Boards of Studies as it may think fit.
(3) Every Board of Studies shall advise the Executive Committee on academic matters falling in its area of concern including norms, standards, model curricula, model facilities and structure of courses.
(4) The area of concern, powers, the constitution and functions of the Boards of Studies shall be such as the Council may provide by regulations.

6.9.3. Section 14 deals with Regional Committees. It runs as follows:
(1) The Council shall establish the following Regional Committees, namely:-
(i) The Northern Regional Committee with its office at Kanpur;
(ii) the Southern Regional Committee with its office at Madras;
(iii) The Western Regional Committee with its office at Bombay;
(iv) the Eastern Regional Committee with its office at Calcutta.
(2) The Council may, if it considers necessary, establish such other Regional Committees as it may think fit.
(3) The Regional Committee shall advise and assist the Council to look into all aspects of planning, promoting and regulating technical education within the region.
(4) The region for which the Regional Committees may be established and the constitution and functions of such Committees shall be prescribed by regulations.

6.10 CHAPTER V deals with FINANCE, ACCOUNTS AND AUDIT. It is not relevant for our purpose.

6.11 CHAPTER VI deals with MISCELLANEOUS items.

6.11.1 Section 23 provides for Power to make regulations to carry out the purposes of the Act.
(1) The council may by notification in the Official Gazette, make regulation not inconsistent with the provisions of this Act, and the rules generally to carry out the purposes of this Act.
(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) regulating the meetings of the Council and the procedure for conducting business thereat;
(b) the terms and conditions of service of the officers and employees of the Council;
(c) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;
(d) the area of concern, the constitution, and powers and functions of the Board of Studies;
(e) the region for which the Regional Committee be established and the constitution and functions of such Committee.

6.12 Regulations were framed in 1994 and amendments were introduced in 1997 and 2002.

6.12.1 Regulation No.2 provides that the regulations shall be applicable to the proposals relating to grant of approval of the Council for establishment of new technical institutions including Universities or University Departments and deemed Universities and for technical institutions functioning on the date of commencement of these regulations at Degree and Diploma levels;
(b) grant of approval of the Council for introduction of any course or programme in the technical institutions and technical departments of Universities or deemed Universities;
(c) grant of approval of the Council for existing intake capacity of seats and for increase in the annual intake capacity of seats in courses and programmes.
*[(2) These regulations shall not be applicable to the proposals relating to post graduate courses for master of Business Administration or equivalent, Master of Computer Application or equivalent, and all post graduate courses in the field of technical education.]
* This sub-regulation was added by the 1997 amendment Regulation.

6.12.2 Regulation 3(f) states that "Council" means the All India Council for Technical Education established under Section 3 of the Act. Regulation 3(h) "Form" means a form appended to these regulations. Regulation 3(k) says that All other words and expressions used herein and not defined but defined in the All India Council for Technical Education Act, 1987 (52 of 1987), shall have, the meanings respectively assigned to them in the said Act.

6.12.3 Regulation 4 deals with Requirement of grant of approval and it runs as follows:
(1) After the commencement of these regulations. -
(a) no new technical institution or University Technical Department, shall be started; or
(b) no course or programme shall be introduced by any technical institutions, University including a deemed University or University Department or College; or
(c) no technical institutions, Universities or deemed Universities or University Departments or Colleges shall continue in admit students for Degree or Diploma courses or programme;
(d) no approved intake capacity of seats shall be increased or

varied;
except with the approval of the Council.

(2) Applications for grant of approval under sub-regulation (1) shall be made by any of the following, namely. -
(i) Government institutions, Government aided institutions, deemed universities and University Departments or Colleges.
(ii) registered societies/trusts.

6.12.4 Regulation 5 deals with Forms for Applications.

6.12.5 Regulation 6 deals with Conditions for grant of approval. It runs as follows:
Every application under sub-regulation (1) of regulation 4 shall be considered subject to the fulfilment of the following conditions namely. -
(i) The financial position of the applicant shall be sound for investment in developed land and in providing related infrastructural and instructional facilities as per the norms and standards laid down by the Council from time to time and for meeting the annual recurring expenditure;
(ii) the courses or programmes shall be conducted as per the assessed technical manpower demands:
(iii) the admissions shall be made according to the regulations and directions of the Council for such admissions in the respective technical institution or university;
(iv) the tuition and other fees shall be charged within the overall criteria as may be laid down by the Council;
(v) the staff shall be recruited as per the norms and standards specified by the Council from time to time;
(vi) the Governing Body in case of private technical institutions shall be as per the norms as specified by the Council;
(vii) any other conditions as may be specified by the Council from time to time.

6.12.6 Regulation 7(4) runs as follows:
"Every application from a registered society or trust for approval at technical institution functioning on the date of commencement of those regulations or for setting up of new technical institution at degree or diploma level or for courses or programmes and the intake capacity of seats shall be submitted to the Bureau RC and also simultaneously to the concerned State Government, the University or the State Board of Technical Education, whichever application, and the Regional Office concerned by the Society or Trust, as the case may be."

6.12.7 Regulation 8 is an important regulation for the purpose of our discussion. It runs as follows:
(1) On receipt of a copy of the application submitted to the Council for obtaining a letter of viability, the concerned University or the Directorate of Technical Education, having jurisdiction in the area in which

the new technical institution is to be started, shall make arrangements for scrutiny and verification of the information contained therein.
(2) If the University or the Directorate of Technical Education, as the case may be, desires to have a local inspection of the site, it may constitute its Local Inspection Committee (LIC) and under intimation to the applicant make such inspection of site.
(3) On receipt of the report of the Local Inspection Committee or after verification of the particulars contained in the application to the satisfaction of the University or the Directorate of Technical Education as the case may be or by such other means as it may deem proper, it shall give its recommendations to the respective State Government or the University Grants Commission with a copy to the Council.
(4) On receipt of the report containing the recommendations of the University or the Directorate of Technical Education, as the case may be, under sub-regulation (3), the State Government or the University Grants Commission, as the case may be, shall forward the report and its recommendations to the Council specificall y dealing with the viability of the proposal having regard to the following requirements. -
(a) Requirement of Land:
The application shall identify suitable land for starting the new technical institution. The minimum requirement of such land shall be as indicated in Table 1 below:

S.No.
(1)
Locality
(2)
Minimum requirement of Land
(Engineering and Technology)
(3)
---
for | for
Degree Level | Diploma Level Institution Institution
1.
2.
3.
Rural area
Taluk or District Headquarters
Metropolitan Cities or State Capitals
10 Hectares | 8 Hectares
4 Hectares | 4 Hectares
2 Hectares | 2 Hectares

Note:- It shall not be necessary for the applicant to have ownership or title of the land proposed to be utilised for starting the new technical institution at the stage of making the application in Form VI. The ownership or title shall be required only after issuance of the letter of viability.

(b) Funds
(i) The minimum requirement of funds for starting of new technical institution by a registered society/trust shall be as detailed in Table II below:

S.No.

(1)
Level of Engineering and Technology Institutions
(2)
Minimum Fund required
(3)
1
Degree
Rs.50 lakhs
2
Diploma
Rs.25 lakhs
Note: It shall not be necessary to produce any fixed money deposit receipt from a bank in the joint name of an applicant society/trust and the respective Regional Officer, at the stage of making an application in Form VI. This will be required only after issue of a letter of viability.....

(c) Notwithstanding anything contained in clauses (a) and (b), the requirement of land and funds in the case of new institutions in MBA, MCA, Architecture, Hotel management and Catering Technology, Pharmacy and Applied Arts and Crafts shall be as per the relevant norms and standards specified by the Council in respect of such institutions.
(d) Track record: Where the applicant in a registered society or trust, it shall have a sound track record of running an educational institution for a minimum period of five years.

(e) Regulation 8(4)(e) was introduced on 25.11.2002. It runs as follows:
" It shall be necessary for the applicant to obtain No Objection Certificate (NoC) from the concerned State Government/UT without which the application shall stand rejected. In case of proposals for establishment of new institution, the Council shall not invite the applicant for hearing if the NoC of the State Government is not received in the Council on or before the cut-off date specified by it. It shall also be desirable for the applicants who are called for hearing to obtain NoC from the concerned affiliating University and produce the same before the Hearing Committee."

(5) In respect of every application submitted to the Council on or before the 31st December, the concerned agencies namely the concerned State Government, University or Directorate of Technical Education and the University Grants Commission, shall endeavour to forward their recommendations to it as expeditiously as possible so as to enable the Council to start processing the applications by the 28th February following -
(6) Subject to the provisions of sub-regulation 9, the Regional Committee or

the Board of Studies, as the case may be shall deliberate on the status of the various proposals and the recommendations of the State Government, University or the Directorate of Technical Education and University Grants Commission thereon and give its recommendations to the Council By March 31.
(7) After considering the recommendations of the agencies concerned and after making such further enquiry as it may deem necessary, the Council may, by 15th April, -

(i) Issue a letter of viability on the proposal to the applicant stating therein that the proposal is viable and that the applicant may proceed to take further action for getting final approval of the Council under these regulations; or
(ii) Issue a letter of regret to the applicant stating therein the specific

ground or grounds on which the application has been rejected :
Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of being heard in the matter.

(8) While issuing a letter of viability under sub-regulation (7), the Council shall ask the applicant to submit by May 15 the following documents, along with the applications in Form I, namely:-
(i) (a) Deed of registration of land relating to ownership/title of the applicant society/trust on the land ear marked for setting up of the new institutions;
(b) A land use certificate from the authority concerned; and
(c) In case the applicant is running any other educational institution in the same premises where the new institution is proposed to be set up an irrevocable resolution of the applicant stating that sufficient area of the premises has been earmarked specifically for setting up the proposed institution.

(ii) A Fixed money Deposit jointly in the name of applicant society/trust and Regional Officer of the respective Regional Office as per the requirements specified in Table II of sub-regulation(s) for a period of ten years after which the applicant may apply to the Council to allow or use the funds for development purposes of the institutions.
(iii) The accounts of the fund shall be maintained by the Regional office.
[(iv) A furnished permanent building atleast adequate for the first year on the land as specified at 8(i) shall be required within the stipulated period].
(Old sub-regulation 8(iv) is replaced by Amendment Regulations 2000, w.e.f 26.8.2000)
(v) A master plan for the entire institutional complex with the details of the plinth area including area of laboratories, classrooms, drawing halls, workshops, library, administrative block, hostel, etc. shall be submitted along with the construction schedule indicating estimated cost of construction involved.
(vi) A registered undertaking on non-judicial stamp paper, stating that the institute shall abide by all the regulations. Norms, Guidelines and Standards of the Council.

(9) In case of applications for introduction of new courses or programmes or for increase in the intake capacity of seats in any institution approved by the Council, the information about additional requirement of infrastructural, and instructional facilities only shall be required to be furnished by May 15.
(10) An Expert Committee appointed by the Chairman of the Council shall, at the cost of the applicant visit the premises of the proposed institution or existing institution, as the case may be, and verify all the details furnished application, prior to final approval being given.
(11) The report of the Expert Committee and other relevant information obtained by the Council shall be placed before Executive Committee for its decision.
(12) Subject to the provisions of sub-regulation (8), the final decision of the Council shall be communicated to the State Government concerned or the University Grants Commission, the University or the Directorate of Technical Education concerned, as the case may be, the Regional Office concerned and the applicant by 15th June in case the application was made before the proceeding 31st December.
(13) The rejection of an application shall not disentitle an applicant to make fresh application for any subsequent academic year.
(14) The Council shall, in every year, before 31st December publish the names of approved technical institutions, University Departments or deemed Universities conducting courses in technical education, the courses and programmes approved by the Council and the number of seats permitted (annual intake capacity) for each course or programme and communicate relevant extracts of the same to the concerned authorities and agencies.
(15) All institutions, courses and number of seats approved after publication of a list under sub-regulation (14) shall stand included in the relevant list.
(16) The time schedule and sequences of processing applications for approved proposals shall be as given in the Schedule appended to these regulations:

Provided that the Council may for good and sufficient reasons to be recorded in writing, modify the time schedule in respect of any class or category of applications.

6.12.8 Regulation 9 runs as follows:
Processing of application by bodies.-
(1) The Council may process the various applications made under these regulations through its following bodies namely. -
(a) Regional Committee concerned;
(b) Board of Studies concerned;
(2) Before giving its recommendation on an application, the Regional Committee or the Board of Studies, as the case may be, may hold a meeting with the Secretary of the State Government dealing with technical education and the Director of Technical Education of the State Government, the Vice-Chancellor, a Director of Indian Institute of Technology, a member from the executive Committee, nominee of the University Grants Commission, expert members nominated by the Chairman of the Council, Adviser Bureau ET, Adviser Bureau AIB, Regional Officer, Advisor Bureau Man Power, representative of Technical Bureau of the Ministry of Human Resource Development, Department of Education and any other special invitees.

6.12.9 Thus we find that Technical Education has been assigned a special place in the scheme of things and it covers a very wide area. The Council, viz., the AICTE, established under Section 3 of the Act plays a pivotal role and wields enormous powers as could be seen from Sections 10 to 14. It is its duty to ensure coordinated and integrated development of technical and management education and to achieve this end it is enjoined to do myriad things. Under Section 12, the AICTE shall constitute an Executive Committee for discharging such functions as may be assigned to it. Four out of eight members of the Council representing the States and the Union Territories under Clause (k) of sub-Section (4) of Section 3, shall be members of the Executive Committee. The Executive Committee has to follow the rules of procedure as the Council may provide by regulations. The Boards of Studies established under Section 13 shall advise the Executive Committee on academic matters falling in its area of concern including norms, standards, model curricula, model facilities and structure of courses. Regional Committees are established by the Council under Section 14 to advise and assist the Council to look into all aspects of planning, promoting and regulating technical education within the region. Regulations have to prescribe the constitution and functions of the Board of Studies as also Regional Committees. In exercise of its powers under Section 23, the Council made regulations in 1997 and 2002 to carry out the purposes of the Act. Regulation 8 is the relevant one for our discussion. It has already been extracted. Regulation 8(4)(e) is the impugned Regulation. Regulation 9 deals with processing of application by the Council through its various bodies. Under subclause (2) of Regulation 9, before giving its recommendation on an application, the Regional Committee or the Board of Studies as the case may be, may hold a meeting with the Secretary of the State Government dealing with Technical Education and the Director of Technical Education of the State Government and others mentioned therein.

6.12.10 The questions that pose for answer in these writ petitions can be arrayed as follows:
(i) Whether power of approval given to the AICTE is legislative in character?
(ii) If so, whether by reason of the amendment legislative function is sought to be delegated to another body contrary to the dicta laid down by the Supreme Court in Adhiyaman (1995 (4) SCC 104), Thirumuruga Kripananda Variyar (1996 (3) SCC 15) and Jaigokul Educational Trust (2000 (5) SCC 231) cases?
(iii) Whether the amendment offends the dictum laid down in TMA Pai Foundation case (2002 (8) SCC 481 : 2002 (8) SCALE 1) that everyone has a fundamental right to establish an educational institution?
(iv) Whether there is abdication of power and whether it is beyond the scope of the provisions of the Act and whether the same is unguided irrational, ultra vires and suffers from excessive delegation and there is no nexus?
(v) Whether it is beyond the scope of Sections 20 and 23 of the AICTE Act.
(vi) Whether the AICTE or the State Government can reject the application on the ground of any policy decision and whether such is beyond legislative competence?
(vii) Whether the amendment is bad for want of guidelines?

(viii) Whether the fundamental rights under Articles 14, 19(1)(g), 29 and 30 are affected?

Points:

7. A Division Bench of this Court had held in ADHIYAMAN EDU. & RESEARCH INSTITUTE v.. STATE OF T.N. [AIR 1991 MADRAS 242] that neither the State Government nor the University has got any power in the matter of granting approval in view of the change of entries in Schedule VII by 42nd Amendment and in terms of the AICTE Act. It has been held in that case that if irregularities are noticed by the State Government or University, it may bring to the notice of the AICTE, which is the competent authority, either to de-recognise or to deaffiliate.

7.1. This is affirmed by the Supreme Court in STATE OF T.N. v. ADHIYAMAN EDU. & RESEARCH INSTITUTE [(1995) 4 SCC 104]; the question that arose was whether after the coming into force of the AICTE Act, 1987 the State Government had power to grant and withdraw permission to start a technical institution as defined in the Central Act. The Supreme Court answered the question in the negative.

7.2 The ratio laid down by the Supreme Court in ADHYAMAN's case has been followed in KIRUBANANDA VARIYAR's case[1996 (3) SCC 15] and JAIGOKUL's case[2000 (5) SCC 231].

7.3 In the meantime, in 1992 Prohibition of Capitation Fee Act was introduced by the States of Andhra Pradesh, Tamil Nadu and Karnataka. One Mohini Jain filed a writ petition under Art.32 before the Supreme Court questioning the collection of capitation fee, claiming that education is a fundamental right Mohini Jain v.. State of Karnataka & others [1992 (3) SCC 666].

7.4 Then on 4.2.1993, a 7 Judges Bench decided UNNI KRISHNAN's case [AIR 1993 SC 2178 : 1993 (1) SCC 645]. The State Government appointed Anna University as its Agency to conduct Single Window System (SWS) for selection of students for admission. The State Government attempted to interfere with the rights of Minority Institutions and Deemed Universities in making admission through SWS. Anna University Act, 1978 was amended by TN Act, 26 of 2001 with effect from 31.12.2001. Proviso to Clause (ac) of Sec.5 mandating NoC from State Government for affiliation was inserted. All the Engineering Colleges in the State of Tamil Nadu were brought under the purview of amended Anna University Act. Anna University was elevated as Affiliating University.

7.5 In 2002 attempt was made to include admission for MBA & MCA courses through Single Window System (SWS). On 3.7.2002 in KONGU ENGG. COLLEGE v.. STATE OF TAMIL NADU [2002 (3) LW 151], the Division Bench ruled that SWS cannot be made applicable to MBA & MCA Courses.

7.6 After the amendment, University did not constitute any syndicate. No statute was framed. Anna University, on 23.7.2002 insisted on

a Certificate from the State Government under Sec.37(B) and Certificates from Pollution Control Board, Factories Act, etc. as a condition for granting affiliation.

7.7 In November, 2002, 11 Judges Bench of the Supreme Court in TMA Pai Foundation & others v.. State of Karnataka & others, 2002 (8) SCALE 1, held that an individual can also establish professional colleges. It is a fundamental right of a citizen to establish educational institutions as referable to Art.19. Neither the State Government nor the University can lay its hands in the matter of admission, fees and service conditions of the employees of self financing professional Colleges. In those circumstances, the present Regulation 8(4)(e) has been introduced.

8. It is now necessary to refer to the various heads of attack, the several decisions cited, their relevance and the ratios laid down by them.

8.1. There is violation of Articles 14, 19(1)(g) and 30(1) of the Constitution. There is discrimination writ large, the restriction imposed is unreasonable and that minority rights are affected.

8.1.1 Under Article 14 of the Constitution it is postulated that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The Supreme Court in several land mark judgments has laid down the principles underlying Article 14 which enshrines the concept of equality both positively and negatively. In In Re Special Courts Bill 1978 [AIR 197 9 SC 478], the Supreme Court has tabulated the propositions as follows:
1. The first part of Art.14 is adopted from the Irish Constitution and enshrines the basic principles of republicanism. The second part is a corollary of the first and based on the Fourteenth Amendment to the U.S. Constitution.
2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons and must possess large powers for distinguishing and classifying persons or things.
3. Classification need not involve an exact or scientific exclusion or inclusion of persons or things; Courts should not insist on delusive exactness or apply doctrinaire tests to determine validity of classification. Classification should not be palpably arbitrary.
4. Article 14 only needs that persons similarly circumstanced should be treated alike both in privileges conferred and liability imposed.
5. While choosing a class of persons, some degree of inequality may result. Classification postulates a rational basis and does not mean herding together certain persons or classes arbitrarily.
6. The law can make and set apart classes according to needs and exigencies of society but the classification should not be arbitrary, artificial or evasive.
7. Twin test of classification must be satisfied.
8. The differentia which is the basis of classification and the object of the Act are two distinct things and there must be nexus between

them.
9. If the legislative policy is clear and definite and provides an effective method of carrying on the policy, it cannot be treated as a piece of discriminative legislation. On the other hand, if the statute itself does not disclose a definite policy or objective and confers authority to make selection at the pleasure of the executive/ administrators, it would be discriminatory irrespective of how it is applied.
10. The possibility of abuse of power is by itself not a ground to treat a law as discriminatory. Discretionary power is not necessarily discriminatory power.
11. The very idea of classification is that of inequality and mere inequality will not determine the constitutionality.
12. Validity of special procedure for trial of special offences must be determined in each case and no general rule applicable to al cases can be laid down.
13. A rule of procedure comes within the purview of Article 14 as any rule of substantive law.
8.2 In In re KERALA EDUCATION BILL, 1957 (AIR 1958 SC 956) on a reference made by the President of India under Article 143(1) of the Constitution of India relating to the validity of the Kerala Education Bill, 1957, in particular while dealing with sub-clause 5 of clause 3 of the Bill, which says that after the commencement of the said Act all new Schools will be governed by the provisions of the Act and any School established without complying with the provisions of the Act shall not be entitled to recognition, the Supreme Court observed on the validity of the said clause as follows:
"There is no force in this last mentioned point, for, the Legislature, it must be remembered knows the needs of its people and is entitled to confine its restriction to those places where the needs are deemed to be the clearest and, therefore, the restrictions imposed in areas of compulsion are quite permissible on the
ground of classification on geographical basis. Whatever other provisions of the Constitution, such restriction may or may not violate, which will be discussed later, it certainly does not infringe Art.14.."

8.3 In PREMIUM GRANITES v.. STATE OF TAMIL NADU [AIR 1994 SC 223 : 1994 (2) SCC 691] it has been held as follows:
"Grant of State largesse by conferment of discretionary power by statute on Government to relax provision prescribing norm or standard for a valid and reasonable purpose is permissible. However, if in a particular case exercise of power is shown to be irrational, unreasonable, discretionary, arbitrary or unfair, it would be violative of Art.14.
Judicial review of Public Policy is called for only if the policy decision infringes fundamental rights."
The Supreme Court referred to its earlier decision in -
T.G.SHIVACHARANA SINGH v. STATE OF MYSORE [AIR 1965 SC 280 : (1 967) 2 LLJ 246] upholding Rule 285 of Mysore Civil Services Rules, 1 958, providing for premature retirement in 'public interest', and that the said rule did not offend Articles 14 and 16 of the Constitution. See also MOTI RAM DEKA v. GENERAL MANAGER, NORTH EAST FRONTIER RAILWAY [AIR 1964 SC 600 : (1964) 5 SCR 683 : (1964) 2 LLJ 467] and SHYAM LAL v.. STATE OF U.P. [(1955) 1 SCR 26 : AIR 1954 SC 369].

8.4 In P.J. IRANI v.. STATE OF MADRAS [AIR 1961 SC 1731 : (1962) 2 SCR 169] Section 30 of the Madras Buildings (Lease and Rent Control) Act, 1949, challenged as ultra vires Article 14 of the Constitution as giving uncontrolled and unguided discretion to the government to exempt any building from all or any of the provisions of the said Act, was upheld by the Supreme Court.

8.5 The decision in P.J. IRANI CASE (supra) was followed by this Court in the decision in S.KANDASWAMY CHETTIAR v. STATE OF T.N. [(19 85) 1 SCC 290]. Section 29 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 providing for discretion to the State Government to grant

total exemption to buildings belonging to public trust from the purview of the Rent Act was held valid and not offending Article 14 of the Constitution on the ground of giving unbridled discretion.

8.6 We are aware of the basic principle that there is always a presumption that governmental action is reasonable and in public interest. It is for the person alleging discrimination to establish that and further show that the impugned provisions are not relateable to any rational classification and do not have any nexus with the object sought to be achieved.

8.7 The complaint is that by reason of the introduction of the amendment, establishment of new engineering colleges is forbidden, two different classes are created, the existing colleges become a favoured entity, a sort of monopoly being created with those institutions being protected by the State which through its policy decision is not allowing any other new engineering college or technical institution to be set up, thus violating Article 14 of the Constitution. I do not agree. The State has indisputable powers for distinguishing and classifying persons or things and while so classifying there cannot be scientific inclusion or exclusion. Article 14 only needs that persons similarly circumstanced should be treated alike both in privileges conferred and liability imposed and there should not be arbitrariness, artificiality or evasiveness. If there is discrimination alleged among new applicants, one can understand. But the situation here is not so. I fail to see violation of Article 14 of the Constitution in the present cases.

9. Article 19(1)(g) of the Constitution protects the right of citizens to practise any profession or to carry on any occupation trade or business. However, sub-clause (6) provides as follows:
"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said subclause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to -
(i) the professional or technical qualifications necessary for practising any profession or carrying n any occupation, trade or business, or
(ii) the carrying on by the State, or by a corporation owned or

controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

9.1 In PAPANASAM LABOUR UNION v.. MADURA COATS LTD [1995 (1) SCC 501] and MRF LTD. v.. INSPECTOR, KERALA GOVERNMENT [1998 (8) SCC 227] it has been held as follows:
"In examining the reasonableness of a statutory provision, whether it is violative of the Fundamental Right guaranteed under Article 19 , one has to keep in mind:
(1) The Directive Principles of State Policy.
(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.
(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).
(5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.
(6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

Reasonableness has to be tested from both substantive and procedural aspects.
[See also THE STATE OF MADRAS v.. V.G. ROW,
AIR 1952 SC 196

STATE OF RAJASTHAN v.. MOHANLAL
AIR 1971 SC 2068

KRISHNAN KANNATH V.. GOVT. OF KERALA,
1997 (9) SCC 495.]

9.1.1. In STATE OF RAJASTHAN v.. MOHAN LAL [AIR 1971 SC 2068], the State conferred monopoly right on its citizen. Article 19(6) of the Constitution of India provides that the monopoly rights could be created in favour of the State in respect of any trade or business. In that case the monopoly rights were not gran ted in favour of the State Government. It was held that if the State obtained a monopoly it would be defensible as a reasonable restriction on the rights of citizens to carry on any business or trade and to ply buses as envisaged under Article 19(6). On the other hand, if the State conferred any monopoly right on a citizen, it would be indefensible and impermissible and would be an infraction of the inviolable provision of the Constitution.

9.2 However, right under Article 19(1)(g) does not extend to shutting out competition. Public interest is served by healthy competition.

It has been so observed by the Supreme Court in MITHILESH GARG v.. UNION OF INDIA [(1992) 1 SCC 168]. Dealing with grant of permission under the Motor Vehicles Act, 1988, where under the new Act permits could be granted to all applicants irrespective of number of persons already operating in the route, the Supreme Court held that this would not be violative of rights of pre-existing operators under Art.19(1)(g).

10. A legislation may be "in the interests of the general public" even though it affects the interests of particular individuals, or even causes hardship to particular individuals owing to the peculiar conditions in which they are placed. (See NARENDRA v.. UNION OF INDIA, AIR 1960 SC 430; HUTHISING MANUFACTURING CO. v.. UNION OF INDIA, AIR 1960 SC 923).

10.1. In one case, SATYANARAYAN v.. COMMISSIONER OF POLICE, AIR 1 955 CALCUTTA 417, it has been held that limiting the number of rickshaws plying within the limits of municipal Corporation is a restriction imposed in the interests of general public. This expression authorizes the State to impose restrictions not only on the ground of public order but also on grounds of social or economic policy (DARUKA CO. v.. UNION OF INDIA, AIR 1973 SC 2711; NARENDRA v.. UNION OF INDIA, AIR 1960 SC 430) or on the ground of the common good e.g. securing the objects mentioned in Part IV of the Constitution (Directive Principles) [KISHAN CHANDER v.. STATE OF M.P., 1964 (1) SCR 765].

10.1.2 In RAM DIAL v.. STATE OF PUNJAB [AIR 1965 SC 1518 : (196 5) 2 SCR 858] the expression "public interest" has been explained at page 866 of the report. It has been held that, while considering the power given to the government to remove a member under Section 14(e) of the Punjab Municipalities Act, the expression "public interest" would necessarily depend upon the time, place and circumstances with reference to which the consideration was made. It may be noted here that Section 14(e) was struck down not on the score that the expression "public interest" is vague and it introduces unguided, and unbridled power but the same was struck down in view of the fact that Section 14(e) providing for removal without a hearing circumvents Section 16 (1) which contemplates a hearing to be given to the members to be affected.

10.1.3. In JALAN TRADING CO. (P) LTD. v. MILL MAZDOOR UNION [AIR 1967 SC 691 : (1967) 1 SCR 15 : (1966) 2 LLJ 546] the validity of several provisions of the Payment of Bonus Act including Section 36 was considered by the Constitution Bench. The Bench held that the power to exempt certain establishments from the operation of the Act given to the appropriate Government under Section 36 was not an unguided power because the Government was enjoined to take 'public interest', the financial position of the establishment, and other relevant circumstances into consideration before exercising the said power. It was held that there was no excessive delegation of legislative authority by Section 36 and the section was held to be valid.

10.1.4. Indeed, the Court respects the wisdom of the Legislature in determining as to what is good for the community, by whose

suffrage it came into existence; but then the Constitution vests in the Court the ultimate responsibility for determining whether a restriction upon a fundamental right is in the interests of the public and the Court must not shirk this solemn duty cast on it by the Constitution [QHARESHI v.. STATE OF BIHAR, AIR 1958 SC 731].

10.1.5. In PRATAP PHARMA (PVT.) LTD. v.. UNION OF INDIA [(1997) 5 SCC 87] it has been held that the arbitrariness of a legislation violating Article 14 cannot be adjudged to be arbitrary when Parliament is of the view that it is to ensure safety of the life of human beings or animals; the regulations for manufacture of drug and patenting it, are necessary and are in public interest as the evil is sought to be remedied by legislative measures. When drugs are administered to human beings/animals, they are required to be regulated as adumbrated under the Drugs and Cosmetics Act, 1940. As a consequence, though by implication the right to practise of medicine or manufacture of the drugs has been guaranteed under Article 19(1)(g), it is a regulation within the meaning of Article 19(6) of the Constitution. As a consequence, it is a reasonable restriction on the right to carry on the trade or business of manufacture of the Ayurvedic drugs by the petitioners..... It is now a well-settled legal position that regulation includes total prohibition, if it is found necessary in the public interest. Manufacture of drugs for administration to human beings/ animals is regulated by the Act and therefore, it attracts Article 19(6).
It was held in that case that Drugs and Cosmetics Act,1940, (as amended by Act 68 of 1982 - amending the definition of "patent and proprietary medicine"), was not ultra vires the Constitution and does not violate the fundamental rights guaranteed under Arts.14 and 19(1)(g) of the Constitution.

10.1.6 The right guaranteed under Art.19(1)(g) is the natural right to enter into or carry on any trade, profession or calling which every person, has, as the member of a civilised society, anterior to and independent of any legislation or grant by the State - the right to run an educational institution [B.W.S.S.B. v.. RAJAPPA, AIR 1978 SC 548]. In UNNIKRISHNAN v.. STATE OF A.P., AIR 1993 SC 2178, it has been held that imparting education cannot be a trade or business and that education cannot be a commercial activity. The Supreme Court observed in Unnikrishnan's case that "..... It (education) may perhaps fall under the category of occupation provided no recognition is sought from the State or affiliation from the University is asked on the basis that it is a fundamental right.....". The Supreme Court in TMA Pai Foundation Case (supra) while agreeing with the conclusion in Unnikrishnan's case that "occupation" comprehends the establishment of educational institutions, disagreed with the proviso in the aforesaid observation to the effect that, this is, so provided no recognition is sought from the state or affiliation from the University concerned, as erroneous. The Eleven Judges Bench observed that the fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail a right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular

business. The question whether there is fundamental right or not cannot be dependent upon whether it can be made the subject matter of controls. The Eleven Judges Bench in paragraph 25 held that "the establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life...".

10.1.7. If it is an occupation as envisaged under Article 19(1)(g), then Art.19(6) will definitely be attracted and there can be reasonable restriction on the right to have this occupation in the interests of the general public. Why I am pointing out this is because an argument was put forward on behalf of the writ petitioners on the basis of para 26 of the said judgment which says that the right to establish and maintain educational institution may also be sourced to Art 26(a), which grants, in positive terms the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health, and that in the instant cases the State Government does not say that public order morality and health are affected or would be affected if NoC is granted. In my view, Article 26(a) cannot be read in isolation. Arts.19(1)(g), 19(6) and 26(a) have to be read conjointly. The State's power to impose reasonable restrictions in public interest cannot at all be doubted. As pointed out in PRATAP PHARMA (PVT.) LTD's case, already referred to, there can be total prohibition or restriction if it is found necessary in the public interest.

10.1.8. In FRANK ANTHONY PUBLIC SCHOOL EMPLOYEES' ASSOCIATION v.. UNION OF INDIA (AIR 1987 SC 311) it has been held that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education cannot be considered to impinge upon the right guaranteed by Art.30(1) of the Constitution. The question in each case is whether the particular measure is, in the ultimate analysis, designed to achieve such goal, without, of-course, nullifying any part of the right of a management in substantial measure..."

10.1.9. In PREMIUM GRANITES v.. STATE OF T.N. [(1994) 2 SCC 691] it has been held as follows:
"The power of relaxation under Rule 39 of Mineral Concession Rules is to be exercised for "mineral development" and "in public interest" after recording reasons for such exercise of power. In our view, it has been rightly contended by the learned counsel in support of the validity of Rule 39, that the exercise of power under the said rule 39 cannot be made arbitrarily, capriciously and on subjective satisfaction of the authority concerned but the same is to be exercised within the parameters of "mineral development" and "in public interest" which as aforesaid, are not vague and indefinite concepts. Such exercise of power must satisfy the reasonableness of State action, before a court of law, if any challenge of improper action in

exercise of the said power under Rule 39 in a given case is made."
10.1.10. It is to be noted that the existing technical institutions cannot complain of violation of Article 19(1)(g), if NoCs are granted and new colleges are established. But at the sametime, if a direct nexus between the restrictions which can be total and which can be imposed on grounds of social and economic policies as well, and the object of the provision is established, as pointed out by the Supreme Court, there will arise a strong presumption in favour of the constitutionality of the Act. It has to be seen whether both substantively and procedurally the restriction imposed is reasonable.

11.1 In THE VELLORE EDUCATIONAL TRUST v.. STATE OF ANDHRA PRADESH [AIR 1988 SC 130] the matter arose under A.P. Education Act 1 of 1 982. The Government adopted a policy not to start educational institution and refused permission to a Trust registered in another State though subsequent thereto, it granted permission to another society though it had applied later than the petitioner Trust. The Supreme Court quashed the order refusing permission with direction to reconsider its application. Incidentally, the Supreme Court also held that there cannot be any bar for the Trust in one State to apply for permission to start an educational institution in another State for the benefit of minority communities.

11.2 In STATE OF MAHARASHTRA v.. MANUBAI PRAGAJI VASHI & OTHERS [1995 (5) SCC 730] the Supreme Court has held that there is a need for well equipped law colleges and when the State is unable to provide several law colleges, it should permit private law colleges with reasonable facilities to function.

11.3 It has been held in KRISHNAN KANNATH v.. GOVT. OF KERALA, 19 97 (9) SCC 495, (already referred to) on policy decision of the Government as follows:
"To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid "embarking on uncharted ocean of public policy".
(See also Workmen v.. MeenakshiMill, 1992 (3) SCC 336.)

11.4. In SHIVAJI UNIVERSITY v.. BHARATHI VIDYAPEETH, AIR 1999 SC 1762, the Supreme Court has held that the decision taken by the Maharashtra Government not to permit establishment of any new additional law college in a particular district is arbitrary and unreasonable and in the

words of the Supreme Court, 'account is not to be taken as to whether or not, a law college exists in a district'. What is relevant and what should be taken into consideration is the population which the existing law college serves and whether, therefore, what is the need for an additional Law College. The Supreme Court set aside the order passed by the University refusing to accord permission for establishment of additional law college only because one other law college existed in the very same district 'Sangli' and that decision was held to be arbitrary and unreasonable.

11.5 In STATE OF RAJASTHAN v.. LATA ARUN [(2002) 6 SCC 252], it has been held by the Supreme Court as follows:
"In an appropriate case, the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates."

11.6 It is well established that the Government must be allowed a wide discretion to implement the policy of the Act. It is entirely upto the Government to choose the scheme from many possible schemes which in its opinion would serve public interest best.

12. In KISHAN CHAND ARORA v.. COMMISSIONER OF POLICE, AIR 1961 SC 705, it has been held that the statute need not specifically lay down guidelines and that it is sufficient if guidelines can be found on a fair reading of the Act the rules made thereunder and other surrounding circumstances.

12.1. In PREMIUM GRANITES v.. STATE OF T.N. [AIR 1994 SC 223 : (1994) 2 SCC 691] the question arose whether Rule 39 of Tamil Nadu Mineral Concession Rules, 1959, enabling State Govt. to grant/renew quarry leases to private persons for reasons to be recorded in the interest of mineral development and in public interest, was violative of Art.14. The Supreme Court held that 'Interest of mineral development' and 'public interest' are expressions of definite concepts and provide sufficient guideline. Rule 8(C) (as amended by G.O.Ms.214 in 199 2), providing that grant of leases to quarry black granite to be made only to Govt. Companies and companies having letters of commitment, has to be read subject to other provisions including R.39. The plea of reading down the provision on ground that it effects a departure from the standard and norm set out in R.8(C) rendering the scheme of the entire rules ineffective, was not sustainable. The Supreme Court further held that absence of exhaustive guidelines for exercise of discretion would not render the provision unconstitutional when guidelines can be gathered from the setting of the statute.

12.2. It was held in P.J.IRANI v.. STATE OF MADRAS, AIR 1961 SC 1 731 : 1962 (2) SCR 169, that enough guidance was given in the preamble and the operative portion of Madras Buildings (Lease and Rent Control) Act,

1949 to exercise the discretion of exemption provided in Section 30 of the said Act. It was held in S.Kandaswamy Chettiar's case (supra) that sufficient guideline was afforded by the preamble and the operative provisions of the Rent Act for the exercise of discretionary power vested in the Government, under Section 29 of the Rent Act.

12.3 In LORDS AND ANGELS TEACHER TRAINING INSTITUTE v.. THE STATE OF TAMIL NADU [1997-1-LW 787] the writ petitions challenged the validity of Regulations 5(e) and 5(f) of the Regulations framed in exercise of the powers conferred under clauses (f) and (g) of Sub Section 2 of S.32 read with Ss.14 and 15 of the National Council for Teacher Education Act, 1993 and sought a direction that those Regulations requiring NoC from the State Government were unconstitutional and as such could not be given effect to. It was contended that a direction should be issued to the Authorities to consider the applications for grant of recognition without reference to the Regulations 5(e) and 5(f) of the Regulations.
The contentions of the State Government inter alia were:
NoC from the State Government was necessary, keeping in view the overall perspective of the situation prevailing in the State or Union territory with particular reference to the man power requirement in Teacher Education; the 'norms' and 'standards' fixed by the National Council for achieving planned and coordinated development were also necessary. It was further pointed out that such institutions had to necessarily get academic support only from the State government like manpower, admission modalities and grant-in-aid, etc.
The Bench observed that "we are not concerned in these cases about the validity or otherwise of the orders of the State government on the question of granting or refusing the No Objection Certificate. When such matters are brought to our notice, we will examine the issue in detail whether the State Government had exercised their powers reasonably and in accordance with the provisions and the objects of the Act, and the Constitution of India. If orders of the State government are found to be illegal or in violation of the rights guaranteed under the Constitution of India, it could always be challenged by the parties aggrieved." Ultimately, the bench held as follows:
"It was contended that the impugned Regulations are contrary to S.32 of the Act itself. "We do not agree. The argument of learned counsel is that the Act nowhere says that a no objection certificate should be obtained from the State Government and therefore, the Regulations cannot be inconsistent with the Act and the requirement as to obtaining no objection certificate from the State Government in the Regulation is therefore illegal and void. The question of inconsistency will come only if there is a provision in the Act, which says that recognition should be accorded without reference to the State Government. In the absence of such a provision the Regulation cannot be said to be inconsistent with the Act. On the other hand, under S.2(d) of the Act, the examining body itself is the State authority. It is very relevant to notice that the State Government is concerned with the Education in general and the Teacher Education in particular, and as such, the State Government cannot be considered to be an authority unconnected or unconcerned with Teacher Education. On the contrary the State Government is vitally concerned with Teacher Education. Therefore, the impugned Regulations 5(e) and (f) cannot be held to provide an out of the way or unnecessary requirement of

obtaining 'No Objection Certificate' from the State Government. It is the State Government, which has to ensure law and order, safety, security, health and hygiene. Therefore, the requirement of obtaining a "No Objection Certificate" as per Regulation 5(e) and 5(f) cannot be held to be unreasonable. It cannot also be held to amount to a restriction, much less an unreasonable restriction on the fundamental right of a religious of linguistic minority."

It has been further held in that case that the object of the Act and the provisions contained therein coupled with the norms and the guidelines, as found in the Regulations, provide sufficient guidelines for the State Government to exercise their power. That apart the power has been vested with the highest authority, namely, the State Government and there is no reason to presume that the highest Authority will act in a biased manner, ignoring public interest and interest of the Teacher Education. In the case where the State Government passes an order, contrary to the well established principles of justice and fair play and the decision is affected by irrelevant and extraneous considerations, it is always open to the affected party to challenge such individual orders of the State Government.

12.4 In ST. JOHN's TEACHERS TRAINING INSTITUTE v.. STATE OF TAMIL NADU [(1993) 3 SCC 595 : 1993-2-LW 291 : 1993 WRIT LR 830] it was contended that G.O.Ms.No.536, dt.17.5.1989 had imposed unreasonable conditions for the establishment of Teacher Training Institutions which practically ousted the parties from the field of education. The Supreme Court upheld the Judgment of the Division Bench of this Court and also approved the eight principles culled out by the Division Bench as being the rights of the minority under Article 30(1) of the Constitution of India. Some of the principles laid down by the Supreme Court in St. John's case which have relevance are:

(1) The fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measurers.

(2) There is no fundamental right under Article 19(1)(g) of the Constitution to establish or administer an educational institution, if recognition is sought therefor.

(3) xxxxx

(4) There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefor.

(5) xxxxx

(6) xxxxx

(7) The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like.

(8) Even unaided institutions are not immune from the operations of general laws of the land such as Contract Law, Tax measures, Economic laws, Social Welfare Legislations, Labour and Industrial laws and similar other laws which are intended to meet the need of the society.

Principle No.4 may not be valid in view of the 11 Judges Bench decision.

12.5 In EXPRESS HOTELS PRIVATE LTD. v.. STATE OF GUJARAT [(1989) 3 SCC 677] it has been held as follows:
"Another relevant consideration is the identity, and status of the repository of the power. The power is given to a high authority like the State Government. In these circumstances, it cannot be said that the power is an uncanalised power and is an arbitrary or unreasonable one. There are statutory guides governing its exercise and the guidelines are governed by well settled principles of interpretation."

13. It has been held by a Constitution Bench of the Supreme Court in DR. PREETI SRIVASTAVA v.. STATE OF M.P. [(1999) 7 SCC 120] that the regulations of the Indian Medical Council have statutory basis and are mandatory. Thus approving the earlier decision in MEDICAL COUNCIL OF INDIA v.. STATE OF KARNATAKA, 1998 (6) SCC 131 dealing with Medical Council Act, Karnataka State Universities act, Karnataka Educational Institutions (Prohibition of Capitation Fees) Act 1984, and Dentists Act (16 of 1948), the Supreme Court held it is the Medical Council which is primarily responsible for fixing standards of medical education and over-seeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. The medical Council Act is relatable to entry 66 of list 1 of Sch.7 to Constitution. It prevails over any state enactment to the extent of repugnancy.
The regulations framed under the Medical Council Act, Section 33 will have mandatory force.
By the same token the Regulations framed under Section 23 of the AICTE Act will have mandatory force, having been so framed to carry out the purposes of the Act.

14. Now let us refer to the decisions relied on by Counsel for the petitioners in support of their case that the AICTE has abdicated its power that when originally the State Government/the University attempted to encroach upon the powers of the AICTE, the latter fell foul on them and moved the Court.

14.1 In BHARATHIDASAN UNIVERSITY v.. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION [(2001) 8 SCC 676] - the details are as under:
The appellant University is a full-fledged university created under the Bharathidasan University Act and is recognised by UGC also. When the appellant University commenced courses in technology such as Information Technology and management, Bioengineering and technology, Petrochemical Engineering and Technology, Pharmaceutical Engineering and Technology etc., the AICTE filed a writ petition before High Court seeking a writ of mandamus to forbear the university authorities from running/conducting any courses and programmes in those technical courses. It was contended that the University did not apply for or secure the prior approval for those courses before their commencement by the University as envisaged under the All-India Council for Technical Education Act, 1987 and the statutory Regulations made thereunder by the AICTE, particularly Regulation 4, which obligated even a university to

obtain such prior approval. The High Court accepted the stand of the AICTE by applying and following the ratio of the decision of a Full Bench of the Andhra Pradesh High Court in M. SAMBASIVA RAO v. OSMANIA UNIVERSITY and as a consequence thereof, ordered the cancellation of the admissions made by the University. Allowing the appeal, the Supreme Court, held -
"A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of the AICTE vis-a-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. .....

If Section 10(k) does not cover a "university" but only a " technical institution", a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of "technical institution" to apply to universities when the Act maintains a complete dichotomy between a "university" and a "technical institution". the AICTE cannot make any regulation in exercise of its powers under Section 23 of the Act, notwithstanding sub-section (1), which though no doubt enables such regulations being made generally to carry out the purposes of the Act, when such power is circumscribed by the specific limitation engrafted therein to ensure them to be "not inconsistent with the provisions of this Act, and the Rules ...". So far as the question of granting approval, leave alone prior or post, Section 10(1)(k) specifically confines the limits of such power of the AICTE only to be exercised vis-a-vis technical institutions, as defined in the Act and not generally..... Therefore, the Regulations insofar as they compel the universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4) and empower itself to withdraw such approval, in a given case of contravention of the Regulations (Regulation 12), are directly opposed to and inconsistent with the provisions of Section 10(l)(k) of the Act and consequently void and unenforceable.
However, the challenge of the appellant with reference to the Regulation in question and claim of the AICTE that the appellant University should seek and obtain prior approval of the AICTE to start a department or commence a new course or programme in technical education does not mean that they have no obligation or duty to conform to the standards and norms laid down by the AICTE for the purpose of ensuring co-ordinated and integrated development of technical education and maintenance of standards."

14.2 In STATE OF TN v.. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUE [1995 (4) SCC 104] the matter arose under the following circumstances:
The State of Tamil Nadu granted permission on 17.4.1984 to all private managements to start private engineering colleges without financial commitment to the Government but subject to conditions. At that time in 1984, the AICTE Act was not on the statute-book. The Government of Tamil Nadu granted permission to the Trust for the academic year 1987-88 to start an engineering college. The University also granted permission on 21.11.1987 for the academic year 1987-88. Later on, these permissions were withdrawn by the

State after issuing showcause on 16.7.1989. so did the University on 26.7.1989. But by that date, the AICTE Act, 1987 had come into force. The learned Single Judge and the Division Bench held in favour of the Trust and quashed the orders of the Government and the University. The said judgments were affirmed by the Supreme Court. The Supreme Court considered the object of the AICTE, 1987 and the functions of the Council established under the Act and held that the AICTE Act was referable to Entry 66 List I of the Constitution of India, relating to "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions". After the constitutional amendment (Forty-second Amendment Act, 1976) Entry 25 of List III in the Concurrent List read:

"Education, included technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 6 6 of List I; vocational and technical training of labour."

Thus, the State law under Entry 23 of List III would be repugnant to any law made by Parliament under Entry 66 of List I, to the extent of inconsistency. The Tamil Nadu Act was of 1976 and the University Act was of 1923 and were laws referable to List III. Whether they were pre-constitutional or post-constitutional laws, they would be repugnant to the AICTE Act passed by Parliament under Entry 66 of List I. The Supreme Court referred to the various provisions of the ACITE Act and on the question of repugnancy held as follows:

" Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-second amendment nor can it make a law under Entry 25 of List III after the Fortysecond amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution."

The Tamil Nadu Rules of 1976 made under the 1976 Act had excluded technical institutions from the purview of the Rules but the Supreme Court pointed out that the Rules were capable of being amended so as to extend to such technical institutions and that if they were so extended, the State Act of 1976 and the rules would require "approval" by the State Government and that would be void. It was stated that in as much as the State Act "will overlap and will be in conflict with the provisions of the Central Act in various areas ..., granting approval for starting new technical institutions, ..., inspection of technical institutions ... which matters are covered by the Central Act".

The Supreme Court then referred to the Madras University Act, 1923 and held that Section 10 of the Central Act dealt with various matters (including granting approval for starting new technical institutions), and that so far as these matters were concerned

"it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To

that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable".

Thus, the Supreme Court clearly held that because of Section 10(k) of the Central Act which vested the powers of granting approval in the Council the T.N. Act of 1976 and the University Act, 1923 could not deal with any questions of "approval" for establishment of technical institutions. All that was necessary was that under the Regulations, the AICTE Council had to consult them.

It was pointed out that there were enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State governments and the universities concerned. The State-level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, the AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.

14.3 This was followed by THIRUMURUGA KIRUPANANDA & VARIYAR THAVATHIRU SUNDARA SWAMIGAL MEDICAL EDUCATIONAL & CHARITABLE TRUST v.. STATE OF T.N. [AIR 1996 SC 2384 : (1996) 3 SCC 15], which was a case relating to medical education and which also related to the effect of a Central law upon a law made by the State under Entry 25 List III. It was held that -

Although in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the conditions for the qualifying criteria laid down is that essentiality certificate regarding desirability and feasibility of having the proposed college at the proposed location should be obtained from the State Government but the said condition cannot be equated with obtaining prior permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the medical University Act. For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone.

In that case the only reason given by the State Govt. for refusal to issue essentiality certificate was that "the Government have not changed the policy of not permitting any private trust or management to start a medical/dental college". This would show that instead of considering the matter of grant of essentiality certificate on the basis of desirability and feasibility of having the proposed medical college at the proposed location,

the State Government has refused to grant the essentiality certificate on the basis of its earlier policy of not permitting any private trust or management to start a medical/ dental college in the State. The State Government could not refuse essentiality certificate on such a policy consideration. The refusal on the part of the State Government to grant the essentiality certificate in respect of the medical college proposed to be established by the appellant-Trust cannot, therefore, be upheld. It would further appear, in that case, the appellant-Trust had already established the infrastructure for establishing a medical college and the reports of the inspection conducted by the Medical Council as well as by the University indicate that the facilities that are available are adequate for starting a medical college, it would service no useful purpose to insist upon obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location. Therefore, the matter of grant of permission for establishing a new medical college by the Trust should be considered by the Central Government without insisting upon the condition regarding obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location.

14.4 In JAYA GOKUL EDUCATIONAL TRUST v.. COMMISSIONER & SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT [(2000) 5 SCC 231], the appellant-Trust submitted an application to the University of Kerala and to the All-India Council for Technical Education seeking to set up a self-financing engineering college. An inspection was carried out by a team of professors of the University; the team made a favourable recommendation. The AICTE also carried out inspections through its agencies. By communication dated 30.4.1995, the AICTE informed the appellant that it was granting conditional approval, subject to the fulfilment of certain specific conditions annexed to the communication.

The appellant, being under the impression that permission was also required to be taken from the State Government, wrote to the Government in this connection. Meanwhile, the Mahatma Gandhi University authorities had written to the Government giving them a list of colleges and courses for affiliation during academic year 1995-96; the college of the appellant Trust was included in the list. The State Government then issued a letter dt.16.8.1996 finally refusing the trust permission for establishing a college. The Trust filed a writ petition challenging this decision; the University was directed to consider the appellant's case for affiliation without reference to the State Govt.'s order. However, a Division Bench of the High Court of Kerala allowed the appeal of the Commissioner and Secretary of the Government (Higher Education Department) and dismissed the writ petition.

Before the Supreme Court, it was contended on behalf of the appellant Trust that after the ACITE Act, 1987 came into force, any statute conferring on a state or university power inconsistent with the AICTE Act, a Central Act, would be void; that State Governments and universities no longer played an independent role in respect of institutions of technical education. The State of Kerala and Mahatma Gandhi University had been consulted by the AICTE, as required under its regulations. Once approval was accorded by the AICTE to the appellant Trust, it was not necessary for it to approach the State for

permission. As for affiliation of colleges, under the Kerala University First Statute, Clause 9(7), the University did not need the approval of the Govt. either.

On behalf of the respondent State, it was contended that, at the relevant time, it was the "policy" of the State of Kerala not to permit the establishment of any more engineering colleges in the State, in view of the large number of already existing colleges and bearing in mind the interest of students and the employment situation. The Supreme Court allowed the appeal of the trust, holding as follows:

As held by the Supreme Court in STATE OF T.N. v.. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUE, the All-India Council for Technical Education Act, 1987, a Central Act and in particular, Section 10(k) occupied the field relating to the "grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterised as requiring the "approval" of the State Government. If, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. case there were enough provisions in the Central Act for consultation by the council of the AICTE with various agencies, including the State governments and the universities concerned. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.

In that case there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining"approval". If the University statute required "approval", it would have been repugnant to the AICTE Act. Regulation 8(4) of the AICTE Regulations, 1994 only required calling for the "comments/recommendations" of the State Government and of the University. In case, there was difference between the State Government, University or the Regional Committee the Central Task Force was to make a final recommendations under Regulation 8(4). Here the letter of approval of the AICTE dated 30.4.1995 showed that the Central Task Force had given its approval. The said approval was based also on the inspection by the Expert Committee of the AICTE. Hence the State Government in its counter, could not have relied upon any contrary opinion of the Director of Technical Education. If the State government had any other valid objections, its only remedy was to place its objections before the AICTE Council under the AICTE Act or before the committees, e.g. State-Level Committee etc.

The so-called "policy" of the State was not a ground for refusing

approval. The State could not have any "policy" outside the AICTE Act and if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. However, if thereafter, any fresh facts came to light after an approval was granted by the AICTE or if the State felt that some conditions attached to the permission and required by the AICTE to be complied with, were not complied with, then the State Government could always write to the AICTE, to enable the latter to take appropriate action.

The University ought to have considered the grant of final or further affiliation without waiting for any approval from the State government and should have acted on the basis of the permission granted by the AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations.

The approval of the AICTE was sufficient. Thus it was not necessary for the learned Single Judge to direct the State Government to reconsider its decision. The learned Single Judge's order quashing the letter of the State Government dated 16.8.1996 is upheld. The direction to Mahatma Gandhi University to consider the application of the appellant for final affiliation or continuance of affiliation is confirmed and this is to be done on the basis of the approval granted by the AICTE dated 30.4.1995, or any other relevant factors in the University Act or its statutes, which are not inconsistent with the AICTE Act or its Regulations.

"The purpose of the AICTE Act, 1987 is to ensure coordinated development of technical education system throughout the country and the promotion of qualitative improvements in its standards."

14.5 These decisions have been relied upon by Counsel for the writ petitioners to drive home their points that AICTE Act is supreme, that there are adequate provisions in the Act for consultation by the AICTE with various agencies, including the State Governments and the Universities concerned, that therefore it would be totally unnecessary to obtain an NoC from State Governments, and that the State Governments cannot be allowed to have any say in the matter of starting new colleges or additional courses. In those cases the real problem was because of the conflict between the Central and the State Acts. There was no statutory requirement of approval of the State Government. Only the views were sought. Regulation 8(4) as it then stood envisaged calling for the "comments/recommendations" of the State Government and of the University. The position was also that the State Government could not have any policy outside the AICTE Act. The position now is different. The AICTE itself wants certain things to be done by the State Government for considering granting of approval. The Executive Committee of the AICTE had taken certain important policy decisions and had passed a resolution to that effect on 20.11.2002. It has not been shown how the policy resolution, which it is claimed is the result of experience gained by the AICTE over the years in administering the Act and the Regulations, is wrong or not in conformity with the AICTE Act. The AICTE had gathered statistical details regarding the functioning of the various technical institutions and found that the seats far exceeded the actual demand for such colleges and

seats. The consequence was fall in revenue in those institutions and reinvestment in supporting the existing infrastructure and creating additional and better infrastructure became impossible resulting in fall in standards of education. Only the State concerned would be in a position to know the ground realities regarding the demand for seats, colleges and infrastructure in education. Only for this purpose policy decision has been taken and NoC from the State concerned is insisted upon. The essential and paramount functions are retained by the AICTE only. There is no abdication of its statutory functions to decide the norms and standards for approval. Thus the decision in Adhiyaman and the cases falling in line will not apply to the present situation.

14.6 In St. JOHNS TEACHERS TRAINING INSTITUTE v.. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION [2003(1) SCALE 757] the question that arose for consideration before the Supreme Court was whether Regulations 5(e) and (f) framed by National Council for Teachers Education insofar as they require submission of application for recognition, along with a No Objection Certificate (NOC) from the State Government or Union Territory in which the institution is located, are ultra vires the provisions of National Council for Teacher Education Act, 1993 and are invalid.

Dealing with Rules, Regulations, Delegated Legislation, etc., the Supreme Court noted as follows:

"A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the Rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and Regulations made by reason of the specific power conferred by the Statutes to make Rules and Regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the Statute. The process of legislation by departmental Regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of Rules and Regulations conferred by Parliament. The main justification for delegated legislation is that the legislature being over burdened and the needs of the modern day society being complex it cannot possibly foresee every administrative difficulty that may arise after the

Statute has begun to operate. Delegated legislation fills those needs. The Regulations made under power conferred by the Statute are supporting legislation and have the force and effect, if validly made, as the Act passed by the competent legislature. (See SUKHDEV SINGH v.. BHAGATRAM, AIR 1975 SC 1331)."

"The question whether any particular legislation suffers from excessive delegation has to be decided having regard to the subject matter, the scheme, the provisions of the Statutes including its preamble and the facts and circumstances in the background of which the Statute is enacted. (See REGISTRAR CO-OPERATIVE SOCIETIES v.. K. KANJABMU, AIR 1980 SC 350 and STATE OF NAGALAND v.. RATAN SINGH, AIR 1967 SC 212). It is also well settled that in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and other invalid, the courts must adopt that construction which makes it valid and the legislation can also be read down to avoid its being declared ultra vires. The Regulations meant in that case, are Regulations 5(e) and (f), requiring the applications made by the institutions for grant of recognition to be accompanied by NOC from the State or Union Territory concerned. But the impugned Regulations, in fact, facilitate the job of the Regional Committees in discharging their responsibilities. The guidelines given by the counsel to the State Government were also there."

On a perusal of the guidelines, the Supreme Court observed that while considering an application for grant of a NOC, the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English, etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media, etc. and also for speciality education for the disabled and vocational education, etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. The guidelines also deal with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education.

The Supreme Court held that the guidelines pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of a NOC, is an arbitrary or unchanelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of a NOC. In case the State Government does not take into consideration the relevant factors enumerated in Sub-Section (3) of Section 14 of the Act and the guidelines issued by the

Council or takes into consideration factors which are not relevant and rejects the application for grant of a NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require a NOC from the State Government or the Union Territory are ultra vires or invalid.

Regulation 6(ii) of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the State Government or the Union Territory concerned, and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of a NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5(e) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under Sub-section (3) of Section 14 of the Act. Of course, the State Government must take a decision on the application moved by an institution for grant of a NOC within a reasonable time.

14.7 In KONGU ENGINEERING COLLEGE v.. THE STATE OF TAMIL NADU [2 002-3-LW 151], writ petitions were filed questioning legality and reasonableness of two Tamil Nadu Government Orders in G.O.Ms.No.108 (Higher Education (J1) Department) dated 9.4.2002 and G.O.Ms.No.112 (Higher Education (J1) Department) dated 18.4.2002. The writ petitioners are Self-financing technical institutions, as also Self-financing Arts and Science Colleges offering Master of Business Administration (MBA) and Master of Computer Application (MCA) courses. These institutions have obtained approval under the All India Council for Technical Education Act 1987, (Central Act No.52 of 1987) (Act) and who are affiliated to one or the other of six Universities in Tamil Nadu. The principal questions which required consideration of the Court were:
first, as to whether the State can act independently of the AICTE and hold the common entrance test for the AICTE approved MBA and MCA seats in the State and proceed to regulate the fees for these courses in exercise of its executive powers under Article 162 of the Constitution of India, and if not whether the Policy resolution of the Central Government dated 18th March 1997 confers such a power on the State Government; second, as to whether the fee fixation and conduct of the entrance test form integral parts of the single window scheme and if so, whether the holding of the common entrance test without complying with the requirements of the policy resolution with regard to the time, method, and manner of fixation of the fees, is permissible in law; third, as to whether the petitioners have a fundamental right under Article 19(1)(g) of the Constitution to run self-financing institutions and if such a right exists, whether the impugned State action has direct impact on that right, and if so is not sustainable by reason of Article 19(6); fourth,

as to whether the impugned orders are unsustainable by reason of relevant factors having been ignored and irrelevant factors having been taken into account; and fifth, as to whether the constitutional rights of linguistic or religious minority institutions are violated by the impugned orders.
It was held that the State could not act independently of the AICTE and hold the common entrance test for the AICTE approved MBA and MCA seats in the State and regulate the fees for these courses in exercise of its executive powers under Art.162 of the Constitution of India in a field covered by the State statute viz., T.N. Act 57 of 1992, prohibiting the collection of Capitation Fee in educational institution, that the Policy Resolution of the Central Government, dt.18.3.1997 , on fee determination, admission, etc. does not confer such a power on the State Government, that the impugned orders attempting as they do to regulate the fee as also the admissions do not take away the right under Article 19(1)(g) of the Constitution to establish and maintain self financing educational institutions, that the impugned orders are unsustainable by reason of relevant factors having been ignored and irrelevant factors having been taken into account, and that it is not necessary to examine the larger question regarding the extent of rights of minority institutions especially when that question (at the time of decision of the case) was being examined by a Eleven Judge Bench of the Supreme Court.
Thus the effect of this bench decision is that the Policy Resolution passed by the Central Government pursuant to direction by the Supreme court in the cases decided by it will reign supreme and will prevail over Regulations already framed by the AICTE and inconsistent with the Policy Resolution/directions issued under Section 20 of the AICTE Act.

15. As pointed out by the learned counsel for the AICTE, when the State Government/the University attempted to usurp the powers of the AICTE, rightly did the AICTE act by taking exception to the same by filing writ petition and questioning the propriety of what the State Government/the University did. That was at a time neither the State Government nor the University had any say in the matter. On its own the AICTE now wants to involve the State Government, which is in the know of things with regard to the necessity for starting new colleges, new courses, increasing the number of seats, etc., and by no means can it be said that the AICTE has abdicated its powers. It only seeks the assistance of the State Government and wants details. Similar question has been thoroughly dealt with by the Supreme Court in St. John's Teachers Training Institute's case (supra) under ACTE Act. May be the provisions/regulations are slightly different. The language in the impugned amendment appears to be harsh. However, the ultimate objects to be achieved are the same.

16. It was submitted on behalf of the petitioners that there could be no comparison between the NCTE Act and the AICTE Act. In case of teachers' employment, problem would arise if there are surplus holders of teacher degree and the State will be under an obligation to provide employment to those teachers. Whereas the AICTE deals with professional/technical courses and more number of professionals would be turned out and this will sub-serve public interest, and there will not be any employment problem.
16.1 It was further submitted that the candidates passing out of technical institutions do not stay put in the same State but go out of the

State and in many cases out of the country itself and the State will not be under any obligation to provide employment to them. I do not agree. In my view it is a wrong attitude to take. You cannot rear or raise technical experts for other countries to benefit from their attainments and proficiency.

16.2 The statistics stare at our face. As pointed out in a news magazine recently the hunger for higher education in India is almost as staggering as the numbers the system throws up: at last count India had 214 Universities, 12,600 colleges, 50 lakh aspiring students, 3.3 lakh teachers and between 1997 and 2001, a 16 per cent rise in student enrolment. But then there is consistent increase of unfilled seats year by year in Technical Institutions, with the result, institutions are unable to cope and maximize their revenue for ploughing back to support the existing infrastructure, and they want lowering of minimum eligibility criteria. This is not disputed by the petitioners. If lowering of eligibility criteria is done, the standard would come down deplorably. The very object for which AICTE was established would be defeated. There can be least doubt that the State Government and the University have significant roles to play and the impugned Regulation requiring as it does the State Government to give no objection cannot be faulted. The State Government will be in the know of things. It can gather irrefutable statistics and assess the requirement of technically qualified persons for different subjects and consequently decide on the priorities for the various courses in tune with the need or demand and avoid non-filling of seats. It is next to impossible for the AICTE to oversee these aspects. No doubt, sans the impugned amendment, the State Government authorities such as Director of Technical Education, Secretary to Government, University, etc. have their say in making recommendations and right to deliberate under Regulation 9. But that by itself cannot mean that the State Government need not be brought on the scene. It will be an added advantage if its superior knowledge of ground realities is utilized by the AICTE for deciding on the need for additional seats, colleges and infrastructure, while keeping to itself the right to decide the norms and standards for approval. Consciously has the AICTE entrusted the job to the State Government though at the time ADHIYAMAN case was decided the position was different and AICTE felt that it was an affront to its authority when the State Government and the University made a conscious bid to usurp its powers and claimed the right to control the establishment of a new technical institution or course without the approval of the AICTE. Be it noted that the ultimate authority is only the AICTE and its essential functions such as the right to determine the norms and standards of technical education have not been abdicated and the AICTE continues to exercise the same.

16.3 The concomitant phenomenon of a policy decision for involving the State Government also cannot be interfered with under Article 226 except when the same is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution as laid down in KRISHNAN KANNATH's case already referred to. The writ petitioners have not succeeded in demonstrating the policy decision to be wanting in wisdom and palpably capricious or arbitrary and not informed by reason or discriminatory. Interests of general public have prevailed over the interests of particular individuals. We have to respect the wisdom of the legislature in determining as to what is good for the community. Inundating the field with unwanted

technical experts is not only against public interest but is to its positive detriment.

16.4 I do not agree with the contention raised on behalf of the petitioners that by reason of the amended Regulation 8(4)(e), the State Government will be exercising powers not meant to be exercised by it. There is no delegation of legislative functions. It sounds great that everyone has a fundamental right to establish an educational constitution. But the impact of Art.19(6) of the Constitution as to reasonable restrictions cannot be understated.

16.5 It is incontrovertible that the statute need not specifically lay down guidelines and that it is sufficient if guidelines can be found on a fair reading of the Act and the rules made thereunder and other surrounding circumstances. Guidelines are there in the application for grant of NoC as also in the Preamble, the Sections of the AICTE Act and the Regulations. The AICTE has also issued guidelines in the form of a letter and they are as follows:

1. Proposal shall be in consonance with the policies, perspective plan for development of technical education of the State Government.
2. Credibility of applicant shall be judged by requisite experience in running or managing higher educational or technical institutions.
3. Courses shall be as per assessed technical manpower demands of the State Government, capacity utilization and employment position.
4. The financial position of the applicant shall be sound for investment in providing related infrastructural and instructional facilities (land, institutional building equipment, library, computers, staff residences, hostels, special facilities, etc.) as per Norms and Standards as laid down by the Council from time to time and for meeting the annual recurring expenditure.
5. State government/University while recommending specialized courses, shall look into the availability of faculty and necessary infrastructure in forms of Laboratories, etc. for running such a course.
6. Capability of the applicant to complete the required infrastructure on the permanent site as per AICTE norms and schedule.
7. The courses recommended shall have the affiliation in the concerned University.
8. The proposal shall be considered keeping in view the number of existing institutions, intake and manpower requirement in the State.
9. The applicant should not have violated any norms prescribed by University or State Government at any stage.
10. Any other relevant parameters which the State Government/ University may deem necessary to be considered.

16.6 As pointed out on behalf of the respondents, in view of Art.1 62 of the Constitution in the absence of any statutory rule occupying the field the Regulations or the Guidelines will be valid.

16.7 We can take judicial notice of the fact that new colleges and polytechnics have sprung up like mushrooms in recent years in utter disregard of the guidelines laid down by the AICTE. They are lacking in everything required to make them good institutions for imparting proper education and training.

16.8 New subjects like mechanised food engineering, molecular

biotechnology, nano science, etc. have to be thought of. No doubt, if and when state-of-the-art institutions having facilities even superior to that of IIT want to come into existence, needless to point out that if and when approached, the State Government concerned will consider the application in the proper perspective and accord NoC and it will be up to the AICTE to consider and decide as to whether to approve the coming into existence of such colleges. Technical Institutions should also pledge to nation building. There should be national identity besides academic superiority.

17. The precedent most apposite to the present writ petitions is the one reported in St. John's School case, 2003 (1) SCALE 757. Regulations made pursuant to the power given under Section 23 are in aid of enforcement of the provisions of the Act and they supplement and do not supplant the Act. As pointed out in Sukhdev Singh v.. Bhagatram, AIR 1975 SC 1331, referred to in St. John's School case, Regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as the Act passed by the competent legislature.

18. Having regard to the background, under which the Act came to be passed, the scheme, the preamble and the provisions of the Act and the discussion supra I hold that
(i) the power of approval given to the AICTE is legislative in character,
(ii) by reason of the amendment no essential legislative function is passed on to another body, viz., State Government - There is nothing contrary to the dicta laid down by the Supreme Court in Adhiyaman, 19 95 (4) SCC 104, Thirumuruga Krupananda Variyar, 1996 (3) SCC 15, and Jai Gokul Educational Trust, 2000 (5) SCC 231 cases.
(iii) the amendment does not offend the dictum laid down in TMA Pai Foundation case, 2002 (8) SCC 481 : 2002 (8) SCALE 1.
(iv) there is no abdication of power
(v) the amendment is not beyond the scope of Sections 20 and 23 of the AICTE Act.
(vi) The AICTE or the State Government cannot reject the applications on the ground of any policy decision.
(vii) There are enough guidelines.
(viii) There is no violation of Articles 14, 19(1)(g), 29 or 30 of the Constitution of India.
(ix) No principle of legitimate expectation is involved.

19. All the writ petitions fail and are dismissed. No costs.

20. The Supreme Court in St. John's case, 2003 (1) SCALE 757, directed the State Government to consider the applications for NoC pending with it within a period of four months from the date of the judgment. It is expected that the State Government shall consider the applications for NoC and make its decision known expeditiously, in any event, within a period of two months from today. Connected WMPs are closed.

Index: Yes
Internet: Yes
pb